

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2012 Supplement

Including Acts of the 2011 Extraordinary Session and the 2012  
Regular Session of the General Assembly

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*Prepared by*

The Code Revision Commission

The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

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## Volume 22

### 2007 Edition

Title 27. Game and Fish

Title 28. General Assembly

Title 29. Guardian and Ward

Title 30. Handicapped Persons

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Including Annotations to the Georgia Reports  
and the Georgia Appeals Reports

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Main Set**

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Charlottesville, Virginia

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ISBN 978-0-327-11074-3 (set)  
ISBN 978-1-4224-3828-2

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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 27

## GAME AND FISH

Chap.

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2. Licenses, Permits, and Stamps Generally, 27-2-1 through 27-2-42.
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### CHAPTER 1

#### GENERAL PROVISIONS

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	27-1-16. Establishment of unit of conservation rangers; qualifications, appointment, and supervisory personnel; retention of badge and weapon upon disability retirement.
	27-1-39. Rules and regulations used to establish criminal violations.

#### **27-1-2. (For effective date, see note) Definitions.**

As used in this title, the term:

(1) "Adult supervision" means under the command and control of a person 18 years of age or older, with the minor being within sight or hearing distance of such person.

(1.1) "Alligator" means *Alligator mississippiensis*, commonly known as the American alligator.

(2) "Alligator farming" means the possession, propagation, and any other act involved in the production of live alligators.

(3) "Alligator product" means any product or article made, either wholly or in part, from any part of the hide of an alligator or alligator meat or any other part of an alligator carcass.

(4) "Artificial lure" means any lure which is made completely of natural or colored plastic, wood, cork, rubber, metal, feathers, hair,

tinsel, styrofoam, sponge, or string, or any combinations of such materials, in imitation of or as a substitute for natural bait. Such term does not include any item which is sprayed with or containing scented or chemical attractions.

(5) "Bag limit" or "creel limit" means the quantity of wildlife which may be taken, caught, or killed during a specified period.

(5.1) "Bait shrimp cast net" means a cast net constructed of a minimum of three-eighths inch bar mesh.

(6) "Big game" means turkey, deer, and bear.

(7) "Board" means the Board of Natural Resources.

(8) "Bushel" means the present United States standard bushel, as determined by the United States Department of Agriculture, which standard bushel measures 2150.4 cubic inches.

(9) "Business premises" means any place of business operation including, but not limited to, offices, sheds, warehouses, vessels, boats, houses, ponds, and other such locations where commercial activity takes place and specifically includes the equipment used in conducting such activity.

(10) "Carrier" means a person engaged in the business of transporting goods and specifically includes a common carrier, a contract carrier, a private carrier, and a transportation company.

(10.1) "Cast net" means a cone shaped net thrown and retrieved by hand without mechanical assistance and designed to spread out and capture fish and shrimp as the weighted circumference sinks to the bottom and comes together when pulled by a line.

(11) "Catch-out pond" means a fresh-water pond or lake where the owner or operator charges persons a fee for the right to fish therein.

(12) "Clam rake" means a hand-held rake, or a tool consisting of a long handle with a bar that is set transversely with projecting prongs and with a wire basket or enclosure modification, which rake or tool is suitable for scratching and removing mollusks of the class Pelecypoda from estuarine and marine substrates.

(13) "Commercial" means of or relating to buying, selling, or exchanging or offering for purchase, sale, or exchange.

(14) "Commercial crab trap" means an oblong cage or other cubical structure which is constructed of wooden slats, hardware cloth, chicken wire, or other similar material, which has one or more tunnel-shaped entrances which allow ingress but limit egress, which is to be used as a trap, which is designed to be left unattended for long

periods of time, and which is used for catching decapod crustaceans, mainly of the species *Callinectes sapidus*.

(15) "Commercial fish hatchery" means a facility consisting of two or more ponds or a raceway system which is capable of growing fish from eggs, fry, or fingerlings to a commercially salable size and which produces fish from such eggs, fry, or fingerlings for sale more than once annually.

(16) "Commercial fishing" means fishing for the purpose of sale, the sale or offering for sale of fish by the person taking such fish, or fishing with commercial fishing gear.

(17) "Commercial quantities" means an amount equal to one bushel or more.

(18) "Commercial shooting preserve" means any shooting preserve open to the general public for a fee.

(19) "Commercial trapper" means a person who traps on any land other than that belonging to himself or to his immediate family.

(20) "Commissioner" means the commissioner of natural resources.

(21) "Crab" means any crab of the species *Callinectes sapidus*.

(22) "Department" means the Department of Natural Resources.

(23) "Domestic species" means those taxa of animals which have traditionally lived in a state of dependence on and under the dominion and control of man and have been kept as tame pets, raised as livestock, or used for commercial breeding purposes, including, but not limited to, dogs, cats, horses, cattle, ratites, and chickens. Animals which live in a captive or tame state and which lack a genetic distinction from members of the same taxon living in the wild are presumptively wild animals, except that lawfully obtained farmed fish which are held in confinement in private ponds shall be known as and considered to be "domestic fish," but only if they are fish species which are either indigenous to Georgia or are fish species which have been recognized prior to 1992 as having an established population in Georgia waters other than private ponds; provided, however, that *Morone americana*, white perch, shall not be a domestic fish.

(24) "Educational" means of or relating to an attempt to learn or convey information about the characteristics and behavior of wild animals or wildlife, where such an attempt is made:

(A) In a public or private college, university, secondary school, or primary school, which college, university, or school is accredited by

either the Georgia Accrediting Commission, Inc., or the Southern Association of Colleges and Schools;

(B) By an independent study conducted in affiliation with any of the institutions mentioned in subparagraph (A) of this paragraph;

(C) By any chartered association or society organized for the purpose of conveying knowledge about such species to its members;

(D) By a research facility; or

(E) By a governmental agency.

(25) "Established bait dealership" means a facility which is used in whole or in part to sell shrimp for bait and which has been inspected by employees of the department and which has been issued a bait dealer license.

(26) "Falconer" means a person licensed according to the laws and rules and regulations pertaining to falconry.

(27) "Falconry" means the sport of taking quarry by means of a trained raptor.

(27.1) "Farmed deer" means fallow deer (*Dama dama*), axis deer (*Axis axis*), sika deer (*Cervus nippon*), red deer and elk (*Cervus elaphus*), and reindeer and caribou (*Rangifer tarandus*), and hybrids between these farmed deer species raised for the commercial sale of meat and other parts or for the sale of live animals.

(28) "Feral hog" means any hog which is normally considered domestic but which is living in a wild state and cannot be claimed in private ownership.

(29) "Fishing" means catching, capturing, taking, or killing fish, mussels, and all seafood and includes all lesser acts such as attempting to catch, capture, or kill by any device or method and every act of direct assistance to any person in catching or attempting to catch fish, mussels, or seafood.

(29.1) "Food shrimp cast net" means:

(A) Until March 1, 2009, a cast net constructed of a minimum of one-half inch bar mesh; and

(B) On and after March 1, 2009, a cast net constructed of a minimum of five-eighths inch bar mesh.

(29.2) "Fresh-water turtle" means any turtle or its eggs within the families Chelydridae, Emydidae (excluding *Malaclemys terrapin* and *Terrapene carolina*), Kinosternidae, and Trionychidae.

(30) "Full-time employee" means a person who works at least 30 hours per week for one employer. Expressly excluded from this term

is an independent contractor or casual vendor who does not receive regular periodic compensation from one employer.

(31) "Fur-bearing animals" means the following animals: mink, otter, raccoon, fox, opossum, muskrat, skunk, bobcat, and weasel.

(32) "Fur dealer" means a person who purchases or sells raw undressed hides, furs, pelts, or skins of fur-bearing animals and alligator hides or alligator products, excluding alligator meat; provided, however, those persons engaged in wholesale or retail furrier operations, that is, those who engage in the manufacture or production of finished fur or alligator products, shall not be fur dealers for purposes of this title.

(33) "Fur dealer's agent" means any person who represents the owner of or a dealer in furs, alligator hides, or alligator products for the purpose of selling such furs, alligator hides, or alligator products.

(34) "Game animals" means the following animals: bear, bobcat, deer, fox, opossum, rabbit, raccoon, sea turtles and their eggs, squirrel, cougar (*Felis concolor*), and all members of the families Alligatoridae and Crocodylidae.

(35) "Game birds" means the following birds: turkey, quail, grouse, and all migratory game birds.

(36) "Game fish" means the following fish, except domestic fish as provided in paragraph (23) of this Code section:

(A) Bass:

- (i) Largemouth bass;
- (ii) Smallmouth bass;
- (iii) White bass;
- (iv) Striped bass;
- (v) Spotted bass;
- (vi) Redeye (Coosa) bass;
- (vii) Striped-white bass hybrid;
- (viii) Shoal bass (Flint River smallmouth); and
- (ix) Suwannee bass;

(B) Trout:

- (i) Rainbow trout;
- (ii) Brown trout; and
- (iii) Brook trout;

(C) Crappie:

- (i) White crappie; and
- (ii) Black crappie;

(D) Shad:

- (i) American shad; and
- (ii) Hickory shad;

(E) Sunfish or bream:

- (i) Flier;
- (ii) Spotted sunfish (stumpknockers);
- (iii) Rockbass (goggleye);
- (iv) Shadow bass;
- (v) Redbreast sunfish;
- (vi) Redear sunfish;
- (vii) Bluegill (bream); and
- (viii) Warmouth;

(F) Perch:

- (i) Walleye; and
- (ii) Sauger;

(G) Pickerel:

- (i) Chain pickerel;
- (ii) Grass pickerel; and
- (iii) Redfin pickerel; and

(H) Catfish:

- (i) Channel catfish; and
- (ii) Flathead catfish.

(37) "Game species" means all game animals, game birds, and game fish.

(38) "Held as pets" means the possession of any wild animal for purposes other than scientific, educational, or public exhibition purposes or other than for sale to the general public or other than for resale to a retail dealer, an exhibition, or a research facility.

(39) "Hunting" means pursuing, shooting, killing, taking, or capturing wildlife or feral hogs. This term also includes acts such as placing, setting, drawing, or using any device used to take wildlife or feral hogs, whether any such act results in taking or not, and includes every act of assistance to any person in taking or attempting to take such wildlife or feral hogs.

(40)(A) "Immediate family," except insofar as that term relates to trapping, trappers, and fur dealers, means all persons living in one household under one head of household and bearing a blood or dependent relationship to such head of household.

(B) "Immediate family," insofar as that term relates to trapping, trappers, and fur dealers, means son, daughter, father, mother, brother, sister, granddaughter, grandson, or spouse.

(40.1) "License" means any document, decal, stamp, permit, or temporary license identification number which authorizes the holder to participate in any activity regulated by the department and which is issued by the department; provided, however, that a temporary license number shall be a valid license for ten days from the date of issuance.

(41) "Licensed bait dealer" means the owner of an established bait dealership within this state who has been properly licensed and bonded pursuant to the applicable laws and regulations.

(42) "May" means is authorized, but not required, and denotes discretion and permission rather than command. When "may" is used in authorizing a certain action to be taken, it shall also include the authorization to change that action.

(43) "Migratory game birds" means all the following birds: brant, coots, cranes, doves, ducks, gallinules, geese, rails, snipe, swans, and woodcock. Birds which are mutations of such birds and birds which are the result of hybridization between such birds or between such birds and other birds are included as migratory game birds.

(44) "Mountain trout" means rainbow, brook, and brown trout.

(45) "Night" means between the hours of 30 minutes after sunset and 30 minutes before sunrise.

(46) "Nongame fish" means any fish not included within the definition of the term "game fish" in this Code section and is synonymous with the term "rough fish."

(47) "Peeler" means a crab which has a soft shell fully developed under the hard shell and which has a pink or red line on the outer edge of the swimming paddles.

(48) "Pen raised game birds" means game birds which are raised in captivity and are more than two generations removed from the wild.

(49) "Perishable" means likely to deteriorate quickly in quality or value unless given special treatment such as dressing, freezing, or cold storage.

(50) "Person" means any individual, partnership, firm, corporation, association, or other entity.

(51) "Pole and line" means any hand line or any type of pole with a line attached and specifically includes a casting rod, a spinning rod, a fly rod, and all similar hand-held equipment for use with bait or artificial lure; provided, however, such pole and line may only be used to entice fish to strike or bite such bait or lure.

(52) "Private oyster or clam beds" means oyster or clam beds in which the right to plant, cultivate, and harvest oysters and clams is not vested in the state pursuant to Code Sections 44-8-6, 44-8-7, and 44-8-8.

(53) "Private pond" means a body of water wholly on or within the lands of one title from which fish cannot go upstream or downstream or to the lands of another.

(54) "Private shooting preserve" means any shooting preserve owned or leased by an individual, partnership, firm, corporation, association, or other entity and used only by the owners, members, and guests.

(55) "Public exhibition" means any commercial or noncommercial display of wild animals or wildlife to the general public, including displays held in nontraveling facilities in fixed locations or displays held in transient facilities which travel to different parts of the state.

(56) "Public road" means any road open to and intended for use by the public and maintained at public expense.

(57) "Purchase" means to acquire, obtain, or receive or to attempt to acquire, obtain, or receive by exchange of valuable consideration. This term specifically includes barter and exchange.

(58) "Raptor" means a live migratory bird of the order Falconiformes or the order Strigiformes, other than the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*).

(59) "Rats and mice" means any gnawing mammal of the class Mammalia, the subclass Theria, the order Rodentia, and either the family Muridae or the family Cricetidae and the genera *Peromyscus*, *Sigmodon*, *Oryzomys*, or *Reithrodontomys*.

(60) "Resident" means any citizens of the United States who has been domiciled within the State of Georgia for a period of at least

three months. For purposes of issuing or procuring the noncommercial hunting and fishing licenses required by this title, residents shall include full-time military personnel on active duty who list Georgia as their home of record in their official military files or who are stationed at a military base located in Georgia and the dependents of such military personnel.

(61) "Retail fish dealer" means any person engaged in the purchasing, raising, propagating, breeding, or other acquiring or possessing of live fish or fish eggs to be sold or furnished to others for use thereby, other than for resale or for aquaria.

(61.1) "Salt water fishing guide" means a person engaged in the occupation of taking fee-paying anglers fishing in the salt waters of this state.

(61.2) "Salt water fishing pier" means a permanent structure built and maintained for the purpose of providing fishing access in the salt waters of this state and associated with a hotel or motel.

(62) "Scientific" means of or relating to a systematic attempt, made at a public or private college, university, secondary school, or primary school, which college, university, or school is accredited by either the Georgia Accrediting Commission, Inc., or the Southern Association of Colleges and Schools; or made in the course of an independent study conducted in affiliation with any of the aforementioned institutions; or made by any chartered association or society organized for the purpose of conveying knowledge to its members; or made by a research facility or a governmental agency, for the purpose of discovering new knowledge through the possession of wild animals or wildlife for the testing of a theory or hypothesis, such theory or hypothesis to be tested according to the accepted procedures of observation, comparison, objective data collection, and analysis.

(63) "Seafood" means marine and estuarine fauna or flora used as food or of a kind suitable for food and specifically includes, but is not limited to, shrimp taken for bait and horseshoe crabs taken for bait.

(64) "Sell" means to dispose of, transfer, or convey or to attempt to dispose of, transfer, or convey by exchange of money or other valuable consideration. This term specifically includes barter and exchange.

(65) "Shedding facility" means a soft-shell crab facility containing a tank or other enclosure in which peelers are or may be kept alive until they shed their shells and become soft-shell crabs and containing such other equipment as may be prescribed by the department.

(65.1) "Shellfish" means common bivalve mollusks which includes all edible species of oysters, clams, mussels, or other bivalves.

(65.2) "Shellfish management area" means a wildlife management area where shellfish are managed by the state or lessees for the propagation of shellfish.

(66) "Shooting preserve" means any area utilized for the purpose of shooting or taking, or shooting and taking, game birds or pen raised game birds.

(67) "Small game" means all game animals and game birds other than big game.

(68) "Soft-shell crab" means a crab which has just emerged from its old shell and has a new soft, pliable shell.

(69) "Soft-shell crab dealer" means any person operating a shedding facility approved by the department.

(70) "State owned oyster or clam beds" means oyster or clam beds in which the right to plant, cultivate, and harvest oysters and clams is vested in the state pursuant to Code Sections 44-8-6, 44-8-7, and 44-8-8.

(71) "Taking" means killing, capturing, destroying, catching, or seizing.

(71.1) "Ten-foot net" means a trawl with a cork line not to exceed ten feet from tie-to-tie between the first and last mesh across the mouth of the net, a lead line not to exceed 13 feet from tie-to-tie between the first and last mesh across the mouth of the net, and leg lines of equal length. No webbing shall extend toward the door beyond the original brail lines which run vertically between the first tie at each end of the cork line and the first tie at each end of the lead line.

(72) "Trapping" means taking, killing, or capturing wildlife with traps. This term also includes all lesser acts such as placing, setting, or staking such traps, whether such acts result in taking or not, and attempting to take and assisting any person in taking or attempting to take wildlife with traps.

(72.1) "Twenty-foot net" means a trawl with a cork line not to exceed 20 feet from tie-to-tie between the first and last mesh across the mouth of the net, a lead line not to exceed 25 feet from tie-to-tie between the first and last mesh across the mouth of the net, and leg lines of equal length. No webbing shall extend toward the doors beyond the original brail lines which run vertically between the first tie at each end of the cork line and the first tie at each end of the lead line.

(73) "Waters of this state" means any waters within the territorial limits of this state and the marginal sea adjacent to this state and the

high seas when navigated as a part of a journey or ride to or from the shore of this state except ponds or lakes not open to the public, whether such ponds or lakes are within the lands of one title or not.

(74) "Wholesale fish dealer" means any person engaged in purchasing, raising, propagating, breeding, or acquiring or possessing live fish or fish eggs to be sold or furnished to others for the purpose of resale, including any person engaged in transporting live fish or fish eggs into this state; provided, however, that any person who holds or sells only "domestic fish" and is registered pursuant to Code Section 27-4-255 or any person who holds or sells fish solely for use in aquaria shall not be considered a wholesale fish dealer.

(75) "Wild animal" means any animal which is not wildlife and is not normally a domestic species in this state. This term specifically includes any hybrid or cross between any combination of a wild animal, wildlife, and a domestic animal. Offspring from all subsequent generations of such crosses or hybrids are wild animals.

(76) "Wild animal business" means the importation, transportation, or possession of any wild animal for the purpose of sale or transfer.

(77) "Wildlife" means any vertebrate or invertebrate animal life indigenous to this state or any species introduced or specified by the board and includes fish, except domestic fish produced by aquaculturists registered under Code Section 27-4-255, mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks or any part thereof. (Ga. L. 1911, p. 142, § 11; Ga. L. 1912, p. 113, § 4; Ga. L. 1925, p. 304, § 7; Code 1933, §§ 45-301, 45-328; Ga. L. 1937, p. 675, § 7; Ga. L. 1937-38, Ex. Sess., p. 332, § 4; Ga. L. 1955, p. 483, § 2; Ga. L. 1960, p. 974, § 1; Ga. L. 1961, p. 515, § 1; Ga. L. 1968, p. 497, § 2; Ga. L. 1969, p. 812, § 1; Ga. L. 1971, p. 236, § 1; Ga. L. 1973, p. 274, § 2; Ga. L. 1973, p. 897, § 1; Ga. L. 1976, p. 771, § 1; Code 1933, § 45-102, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1977, p. 1270, § 1; Ga. L. 1978, p. 816, §§ 1-6; Ga. L. 1979, p. 420, §§ 1, 2; Ga. L. 1979, p. 678, §§ 1-12; Ga. L. 1979, p. 800, § 1; Ga. L. 1979, p. 893, §§ 1-3; Ga. L. 1979, p. 1094, §§ 1, 2; Ga. L. 1981, p. 798, § 1; Ga. L. 1985, p. 913, § 1; Ga. L. 1985, p. 1047, §§ 1, 2; Ga. L. 1986, p. 1460, § 3; Ga. L. 1988, p. 848, §§ 1, 2; Ga. L. 1989, p. 1207, § 1; Ga. L. 1989, p. 1579, §§ 1, 2; Ga. L. 1991, p. 693, § 1; Ga. L. 1992, p. 6, § 27; Ga. L. 1992, p. 1507, § 2; Ga. L. 1992, p. 1636, § 1; Ga. L. 1992, p. 2863, § 1; Ga. L. 1993, p. 779, § 1; Ga. L. 1994, p. 600, § 1; Ga. L. 1994, p. 1742, § 1; Ga. L. 1995, p. 244, § 30; Ga. L. 1995, p. 543, § 1; Ga. L. 1995, p. 946, § 1; Ga. L. 1996, p. 980, § 1; Ga. L. 1997, p. 1395, § 3; Ga. L. 1998, p. 783, § 1; Ga. L. 1998, p. 1133, §§ 1, 2, 3; Ga. L. 1999, p. 81, § 27; Ga. L. 2001, p. 323, § 1; Ga. L. 2001, p. 1013, § 1; Ga. L. 2003, p. 140, § 27; Ga. L. 2003, p. 654, § 1; Ga. L. 2004, p. 948,

§ 2-2; Ga. L. 2007, p. 91, § 1/HB 81; Ga. L. 2007, p. 93, §§ 1, 2/HB 100; Ga. L. 2010, p. 952, § 1/SB 474.)

**Delayed effective date.** — Ga. L. 2004, p. 948, § 3-1(c), provides that the 2004 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assembly. This Code section, as amended, is not set out in the Code owing to the delayed effective date. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly. After the appropriation is made, paragraphs (23) and (77) will read as follows: "(23) 'Domestic species' means those taxa of animals which have traditionally lived in a state of dependence on and under the dominion and control of man and have been kept as tame pets, raised as livestock, or used for commercial breeding purposes, including, but not limited to, dogs, cats, horses, cattle, ratites, and chickens. Animals which live in a captive or tame state and which lack a genetic distinction from members of the same taxon living in the wild are presumptively wild animals, except that lawfully obtained farmed fish which are held in confinement in private ponds shall be known as and considered to be 'domestic fish,' but only if they are fish species

which are either indigenous to Georgia or are fish species which have been recognized prior to 1992 as having an established population in Georgia waters other than private ponds; provided, however, that *Morone americana*, white perch, shall not be a domestic fish; and provided, further, that pacific white shrimp produced or used by and contained on the premises of a pacific white shrimp aquaculturalist registered under Code Section 2-15-6 shall not be presumed to be wild animals.

"(77) 'Wildlife' means any vertebrate or invertebrate animal life indigenous to this state or any species introduced or specified by the board and includes mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks or any part thereof; except that such term does not include any domestic fish produced by aquaculturalists registered under Code Section 27-4-255 or any pacific white shrimp produced or used by and lawfully contained on the premises of a pacific white shrimp aquaculturalist as those terms are defined by Code Section 2-15-2."

**The 2010 amendment**, effective June 3, 2010, added paragraph (29.2).

**Law reviews.** — For survey article on workers' compensation law, see 59 Mercer L. Rev. 463 (2007).

## 27-1-6. Powers and duties of department generally.

The department shall have the following powers and duties:

- (1) Subject to all applicable state laws, to acquire by purchase, condemnation, lease, agreement, gift, or devise lands or waters suitable for the purposes enumerated in this paragraph and to develop, operate, and maintain the same for the following purposes:
  - (A) For fish hatcheries, nursery ponds, game farms, sanctuaries, reservations, and refuges;
  - (B) For wildlife restoration, propagation, protection, preservation, research, or management; and
  - (C) For public hunting, fishing, or trapping areas, where the public may hunt, fish, or trap in accordance with the provisions of law and the rules and regulations of the board;

(2) To capture, propagate, transport, purchase, sell, band, or release any species of wildlife for propagation, research, or stocking purposes; to safeguard and enhance the habitat on which the wildlife depends; and to exercise control measures of nuisance or destructive species;

(3) To enter into cooperative agreements with educational institutions and state, federal, and other agencies to promote wildlife management, conservation, and research;

(4) To purchase all uniforms, equipment, and supplies necessary for the administration of this title;

(5) To carry out the operational, field, and administrative functions contained in this title;

(6) To publish in print or electronically and distribute magazines, pamphlets, books, or literature of any nature as may be necessary to inform and educate the public concerning the wildlife resources of the state and the functions, duties, activities, laws, rules, and regulations of the department pursuant to this title and pursuant to any other title;

(7) To keep a public record which correctly discloses all moneys received and expended by the department and all such information as may be necessary or proper in the conduct of the affairs and business of the department. The books and accounts of the department shall be audited in the same way as other books and accounts of the other departments of the state are audited;

(8) To pay to each conservation ranger the expenses incurred by such ranger in the performance of his duties;

(9) To contract with private landowners for the purposes of managing and operating public hunting and fishing areas on the property of such private landowners; and

(10) To develop an official waterfowl stamp for the State of Georgia and to issue such stamp to any interested person and to contract with any person granting such person the right to reproduce and market the official waterfowl stamp in stamp, print, poster, or such other form as the department shall determine and to contract with any person for the purpose of promoting, supporting, or otherwise assisting any waterfowl program of the department, including, but not limited to, public education; research; acquisition of wetlands; and management, development, and protection of waterfowl programs; provided, however, that not more than 15 percent of the funds retained by the department, if any, shall be used for law enforcement activities. The department is authorized to establish a special fund to be known as the "Waterfowl Stamp Fund." This fund shall consist of

all moneys paid to the department as royalties, all moneys derived from the sale of any official waterfowl stamp, and all moneys contributed to the fund for the purposes provided in this paragraph and all interest thereon. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The department shall administer the fund and may expend moneys held in the fund in furtherance of the purposes provided in this paragraph. Moneys paid into this fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriate for these purposes. As used in this paragraph, the term "waterfowl" means any species of ducks, swans, or geese. (Ga. L. 1911, p. 137, §§ 1, 4; Ga. L. 1924, p. 101, §§ 1, 3, 4, 7, 26; Ga. L. 1925, p. 302, § 22; Ga. L. 1925, p. 339, § 31; Ga. L. 1931, p. 7, § 25; Code 1933, §§ 45-106, 45-109; Ga. L. 1937, p. 264, §§ 1, 4, 9; Ga. L. 1943, p. 128, §§ 1, 2, 12, 14; Ga. L. 1945, p. 404, §§ 4, 8; Ga. L. 1952, p. 206, § 1; Ga. L. 1955, p. 483, § 3; Ga. L. 1960, p. 228, § 1; Ga. L. 1966, p. 149, § 1; Ga. L. 1968, p. 497, § 5; Ga. L. 1972, p. 1015, § 1527; Ga. L. 1973, p. 344, § 1; Code 1933, § 45-105, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1985, p. 691, § 1; Ga. L. 1987, p. 357, § 1; Ga. L. 1989, p. 506, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted "in print or electronically" near the beginning of paragraph (6).

### **27-1-13. Disposition of funds received by department; appropriations; grants and donations for natural resources conservation camps.**

(a) All funds resulting from the operation of the department and from the administration of the laws and regulations pertaining to wildlife, excluding fines, but including all license fees and other income (except that income provided for in subsection (b) of this Code section), shall be paid into the general funds of the state treasury; and each year at least such amount shall be appropriated to the department. The board shall be authorized to establish, by rule or regulation, a procedure to refund fees collected in error or overpayment or to which the department or state is otherwise not entitled.

(b) The department is authorized to accept grants and donations (either monetary or of real or personal property) for the purpose of creating and maintaining natural resources conservation camps in the state. Any donation or grant so received and any income therefrom or any income derived from the operation of any of the camps shall be held and maintained by the department for the exclusive use and the benefit of each of said camps. The board is authorized and directed to

promulgate reasonable rules and regulations respecting the operation of said camps.

(c) Notwithstanding any other law to the contrary, the department is authorized to retain all miscellaneous funds generated by the operation of its wildlife management areas and refuges, its public fishing areas, and its wildlife, hunter, and boating education programs for use in the operation and maintenance of those areas, refuges, and programs. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury. Nothing in this Code section shall be construed so as to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury. The department shall comply with all provisions of Code Section 45-5-7, Parts 1 and 2 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such miscellaneous funds. (Ga. L. 1931, p. 173, § 8; Code 1933, § 45-220; Ga. L. 1943, p. 128, § 10; Ga. L. 1955, p. 483, § 8; Code 1933, § 45-114, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1980, p. 95, § 1; Ga. L. 1980, p. 323, § 3; Ga. L. 1984, p. 22, § 27; Ga. L. 1995, p. 10, § 27; Ga. L. 2001, p. 1013, § 3; Ga. L. 2011, p. 558, § 4/SB 121.)

**The 2011 amendment**, effective July 1, 2011, added the last sentence in subsection (a).

**27-1-16. Establishment of unit of conservation rangers; qualifications, appointment, and supervisory personnel; retention of badge and weapon upon disability retirement.**

(a) Within the department is established a unit of peace officers to be known as conservation rangers. All such conservation rangers shall be at least 21 years of age. Such unit of peace officers shall include, but not be limited to, the commissioner and other supervisory personnel; provided, however, that the commissioner and the director of the division to which peace officer functions are assigned shall be excluded from the classified service as defined by Code Section 45-20-2 unless otherwise provided by law. The commissioner shall have the power to appoint such a number of conservation rangers of the state at large, as may be necessary to carry out the duties assigned to them, who shall be charged with the law enforcement responsibilities pertaining to the department.

(b) After a conservation ranger has accumulated 25 years of service with the department as a peace officer and upon leaving such department under honorable conditions, such conservation ranger shall be entitled as part of such officer's compensation to retain his or her

weapon and badge pursuant to regulations promulgated by the commissioner.

(c) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When a conservation ranger leaves the department as a result of a disability arising in the line of duty, such conservation ranger shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner. (Ga. L. 1931, p. 173, §§ 1-3; Code 1933, § 45-124; Ga. L. 1943, p. 128, § 19; Ga. L. 1945, p. 404, § 3; Ga. L. 1955, p. 483, § 13; Ga. L. 1968, p. 497, § 5; Ga. L. 1973, p. 1483, § 1; Ga. L. 1974, p. 1453, § 1; Code 1933, § 45-116, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 8; Ga. L. 1981, p. 798, § 2; Ga. L. 1993, p. 392, § 1; Ga. L. 2004, p. 1058, § 2; Ga. L. 2005, p. 60, § 27/HB 95; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-32/HB 642.)

**The 2009 amendment**, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the third sentence of subsection (a).

**The 2012 amendment**, effective July 1, 2012, substituted "as defined by Code Section 45-20-2" for "under the State Personnel Administration as provided for in Chapter 20 of Title 45" in the third sentence of subsection (a); and, in subsection (b), substituted "such officer's compensation" for "his compensation", and inserted "or her".

**Editor's notes.** — Ga. L. 2012, p. 446,

§ 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

## 27-1-20. Additional powers of conservation rangers; functions of other agencies assigned to department.

### RESEARCH REFERENCES

**ALR.** — Authority of public official, whose duties or functions generally do not

entail traffic stops, to effectuate traffic stop of vehicle, 18 ALR6th 519.

## 27-1-39. Rules and regulations used to establish criminal violations.

Notwithstanding any other law to the contrary, for purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this title, the term "rules and regulations" shall mean those rules and regulations of the Board of Natural Resources in force and effect on January 1, 2012. (Code 1981, § 27-1-39, enacted by Ga. L. 1998, p. 1550, § 1; Ga. L. 2001, p. 1013, § 5; Ga. L. 2002, p. 1232, § 2; Ga. L. 2003, p. 654, § 2;

Ga. L. 2006, p. 226, § 1/HB 338; Ga. L. 2008, p. 702, § 1/HB 239; Ga. L. 2010, p. 952, § 2/SB 474; Ga. L. 2012, p. 739, § 1/HB 869.)

**The 2008 amendment**, effective May 13, 2008, substituted “term” for “terms” near the middle and substituted “January 1, 2008” for “January 1, 2006” at the end.

**The 2010 amendment**, effective June 3, 2010, substituted “terms” for “term” in the middle and substituted “January 1,

2010” for “January 1, 2008” at the end of this Code section.

**The 2012 amendment**, effective May 1, 2012, substituted “term” for “terms” near the middle and substituted “January 1, 2012” for “January 1, 2010” at the end.

## CHAPTER 2

### LICENSES, PERMITS, AND STAMPS GENERALLY

#### Article 1

##### Hunting, Trapping, or Fishing

Sec.

- 27-2-3. Effective periods of hunting, fishing, and trapping licenses generally; multiyear licenses.
- 27-2-3.1. Hunting licenses; sportsman’s license; license card carrier requirement; creation of lifetime sportsman’s licenses.
- 27-2-4.3. Special hunting privileges for young people with a terminal illness.
- 27-2-5. Required hunter education courses.
- 27-2-6. Trout license, official Georgia waterfowl license, big game license, and alligator hunting license.
- 27-2-7. Powers of department as to making and entering into

Sec.

- agreements relating to hunting license reciprocity.
- 27-2-17. Falconry permits; duties, permitted acts, and prohibitions pertaining to permit holders.
- 27-2-20.1. (Effective January 1, 2013) Required participation in Saltwater Information Program.
- 27-2-21. Field and retriever trials; permits; hunting licenses.
- 27-2-23. License, permit, tag, and stamp fees.
- 27-2-30. Establishment of the Wildlife Endowment Fund; limitations on expenditures from the fund.
- 27-2-31. Wildlife control permits.

#### Article 2

##### Wildlife Violator Compact

- 27-2-41. Rules and regulations authorized.

## ARTICLE 1

### HUNTING, TRAPPING, OR FISHING

#### **27-2-1. Hunting, trapping, or fishing without license or permit generally; nonresidents.**

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, limiting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

**27-2-3. Effective periods of hunting, fishing, and trapping licenses generally; multiyear licenses.**

(a) Except as otherwise specifically provided, all hunting, fishing, and trapping licenses, including without limitation commercial fishing and commercial fishing boat licenses issued pursuant to Code Section 27-2-8, shall be effective from April 1 to March 31 of the following year; except that all annual, two-year, or other multiyear hunting, fishing, and hunting and fishing combination licenses issued pursuant to paragraphs (1) through (4) of Code Section 27-2-23 shall be effective through the applicable one-year, two-year, or multiyear anniversary of the date of issuance.

(b) Multiyear licenses valid for any desired number of years may be purchased through a single transaction for licenses listed in paragraphs (1) through (4) of Code Section 27-2-23. The fee for any such multiyear license shall be equivalent to the lowest cost combination of annual or two-year licenses necessary to form the desired multiyear license period. No multiyear license shall be valid at the time of hunting or fishing unless the licensee is a resident of this state at such time. (Ga. L. 1955, p. 483, § 30; Code 1933, § 45-302, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 22; Ga. L. 1978, p. 1552, § 2; Ga. L. 2003, p. 654, § 3; Ga. L. 2007, p. 47, § 27/SB 103; Ga. L. 2009, p. 787, § 1/HB 326; Ga. L. 2012, p. 775, § 27/HB 942.)

**The 2009 amendment**, effective May 5, 2009, designated the existing provisions as subsection (a); in subsection (a), inserted “, two-year, or other multi-year” near the middle and substituted “through the applicable one-, two-, or multi-year anniversary of” for “for 12 months from” near the end; and added subsection (b).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation throughout this Code section and substituted “one-year, two-year, or multi-year anniversary” for “one-, two-, or multi-year anniversary” in subsection (a).

**27-2-3.1. Hunting licenses; sportsman’s license; license card carrier requirement; creation of lifetime sportsman’s licenses.**

(a) Reserved.

(b) Reserved.

(c) The requirements in this title for procuring any license or permit for noncommercial hunting and fishing privileges, except for hunting alligators, shall be satisfied by a resident who procures a sportsman’s license. An applicant for such license shall, prior to the issuance of the license, complete a screening questionnaire associated with the federal Migratory Bird Harvest Information Program.

(d) All licenses, stamps, or permits for noncommercial hunting and fishing privileges must be attached to or printed on a form provided by the department which must include the applicant's name, address, date of birth, and hunter safety certification number; provided, however, that each such item of information may be, but is not required to be, printed on lifetime licenses.

(e)(1) The requirements in this title for procuring any license, stamp, or permit for noncommercial hunting and fishing privileges shall be satisfied by a resident or nonresident who procures a lifetime sportsman's license.

(2) An applicant for such license who is a resident shall, prior to the issuance of the license, provide satisfactory evidence of residency.

(3) An applicant for a veteran's lifetime sportsman's license shall, in addition to satisfactory evidence of residency, be required to provide satisfactory evidence that he or she served more than 90 days of federal active duty military service and was honorably discharged.

(4) An applicant for such license who is a nonresident shall not be eligible for issuance of such license unless he or she is under 16 years of age and is the grandchild of a resident who holds a valid paid lifetime sportsman's license. The resident grandparent who holds such a lifetime sportsman's license and who is the sponsor of a nonresident applicant for a lifetime sportsman's license must certify the nonresident applicant's relationship to him or her in writing to the department.

(5) For purposes of procuring a lifetime sportsman's license, the term "residency" means a domicile within Georgia for a minimum of 12 consecutive months immediately prior to procuring such license. Satisfactory evidence of residency shall consist of a current Georgia driver's license or official Georgia identification card issued by the Department of Driver Services and at least one of the following:

- (A) A voter registration card;
- (B) A copy of the prior year's Georgia income tax return;
- (C) A current Georgia automobile registration; or
- (D) A warranty deed to property at the same address as is displayed on the Georgia driver's license.

Minors under 18 years of age shall be presumed to be residents upon proof of parent's residency as provided for in this Code section. For purposes of procuring the Type I (Infant) lifetime license, a certified copy of the birth certificate of the licensee shall be required.

(f)(1) Lifetime sportsman's licenses and fees for residents shall be as follows:

- (A) Type I (Infant), available only to those individuals under two years of age: \$200.00;
- (B) Type Y (Youth), available only to those individuals from two through 15 years of age: \$350.00;
- (C) Type A (Adult), available to those individuals 16 years of age or older: \$500.00;
- (D) Type SD (Senior Discount), available to those individuals 60 years of age or older: \$95.00;
- (E) Type S (Senior), available to those individuals 65 years of age or older: no charge; and
- (F) Type V (Veterans), available only to those individuals who served more than 90 days of federal active duty military service and were honorably discharged: eighty percent of the amount of the fee specified for Type A lifetime sportsman's licenses in subparagraph (C) of this paragraph.

(2) The fee for any lifetime sportsman's license for a nonresident, Type NR, shall be twice the amount of the fee for a Type A (Adult) lifetime sportsman's license for a resident.

(g) Lifetime sportsman's licenses shall be valid for the lifetime of the purchaser, whether resident or nonresident. Change of residency to another state shall not affect the validity of the lifetime license when hunting or fishing in Georgia.

(h) The commissioner shall revoke the lifetime sportsman's license of any person who knowingly attempts to or does purchase, obtain, or assist another person to obtain a lifetime sportsman's license by fraudulent means, without refund of any fees paid.

(i) Upon payment of a replacement fee up to \$10.00, any lifetime sportsman's license other than a Type S license may be replaced if lost, stolen, or destroyed, provided that the applicant's name and lifetime license number are in the records of the department. No replacement fee shall be charged for replacement of a Type S license. Replacement fees for all other licenses shall be \$3.00 per transaction, regardless of the number of licenses being replaced in a given transaction.

(j) Once a lifetime license is issued, no refunds of fees will be made except in the case of the death before age 16 years of a Type I (Infant) lifetime license holder or a Type Y (Youth) license holder, in which case a full refund of fees collected may be made upon submission of the lifetime license and any other documentation required by the department. (Code 1981, § 27-2-3.1, enacted by Ga. L. 1995, p. 946, § 4; Ga. L. 1998, p. 783, § 4; Ga. L. 1998, p. 826, § 1; Ga. L. 2001, p. 1013, § 7; Ga. L. 2002, p. 415, § 27; Ga. L. 2003, p. 654, §§ 4, 5; Ga. L. 2004, p.

338, § 1; Ga. L. 2005, p. 334, § 11-1/HB 501; Ga. L. 2007, p. 91, § 1A/HB 81; Ga. L. 2009, p. 787, § 2/HB 326; Ga. L. 2010, p. 878, § 27/HB 1387.)

**The 2009 amendment**, effective May 5, 2009, substituted “Reserved.” for the former provisions of subsection (a), which read: “Persons hunting during any archery season or primitive weapons season must purchase a primitive weapons license, unless otherwise provided by this title.”

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted “sportsman’s” for “sportsman” at the end of the first sentence of subsection (c).

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, lim-

iting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

#### 27-2-4.2. Courtesy nonresident fishing licenses to certain paralyzed or disabled veterans.

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, lim-

iting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

#### 27-2-4.3. Special hunting privileges for young people with a terminal illness.

(a) As used in this Code section, the term “terminal illness” means an incurable or irreversible condition with a corresponding life expectancy that does not exceed 12 months.

(b) The commissioner is authorized to issue special authorization to hunt big game or alligators to any person not older than 21 years of age who has been diagnosed with a terminal illness by a doctor of medicine currently licensed to practice either by the Georgia Composite Medical Board or the State Board of Examiners in Osteopathy. Such special authorization may include waiving legal weapons requirements, antler restrictions, quota limitations, or hunter education requirements as necessary to facilitate special situations for persons with a terminal illness. The commissioner may impose any terms and conditions deemed necessary to implement the special authorization. Such authorization shall be for only one hunting season.

(c) The commissioner may prepare an application to be used by persons requesting special authorization and may require signed documentation from a doctor of medicine currently licensed to practice either by the Georgia Composite Medical Board or the State Board of

Examiners in Osteopathy verifying that an applicant has a terminal illness.

(d) A person who receives special authorization to hunt under this Code section shall conduct all hunting under the direct supervision of a licensed adult hunter and abide by the terms and conditions of the special authorization issued by the commissioner. (Code 1981, § 27-2-4.3, enacted by Ga. L. 2012, p. 889, § 2/SB 309.)

**Effective date.** — This Code section became effective July 1, 2012. Assembly, provides that: "This Act shall be known and may be cited as 'Taylor's Law.'"

**Editor's notes.** — Ga. L. 2012, p. 889, § 1/SB 309, not codified by the General

## **27-2-5. Required hunter education courses.**

(a) It shall be unlawful for any person born on or after January 1, 1961, to procure a hunting license or to hunt by means of weapons in this state unless that person has been issued a certificate or other evidence the department deems acceptable which indicates satisfactory completion of a hunter education course as prescribed by the board. Persons ages 16 through 25 shall provide such certificate or other evidence to the issuing agent at the time of purchase of a hunting license. All persons required by this subsection to complete a hunter education course, by signing such license, by receiving a temporary license identification number, or by receiving a license from a telephone license agent, Internet license agent, or other vendor, shall certify their compliance with this subsection.

(b) It shall be unlawful for any person authorized to issue hunting licenses in this state to issue a hunting license to any person age 16 through 25 unless that license agent shall have been provided with a certificate showing the license applicant has satisfactorily completed a hunter education course as prescribed by the board, or to any other person born on or after January 1, 1961, unless such person provides such other evidence of completion of a hunter education course as the department deems acceptable. Internet and telephone license agents may accept a valid hunter education certificate number as fulfillment of this requirement.

(c) It shall be unlawful for any person age 16 through 25 who is not required by law to obtain a hunting license to hunt in this state unless that person carries on his or her person while hunting a certificate attesting to that person's satisfactory completion of a hunter education course as prescribed by the board. Such person shall present his or her certificate to a conservation ranger or deputy conservation ranger for inspection upon demand.

(d) Any person who is age 12 through 15 shall satisfactorily complete a hunter education course as a prerequisite to hunting with a weapon

in this state. It shall be unlawful for any adult to permit his or her child or ward age 12 through 15 to hunt with a weapon unless the child has a certificate attesting to his or her satisfactory completion of such course on his or her person; provided, however, that a hunter education course is not required for a child age 12 through 15 years who is hunting under adult supervision by a licensed adult hunter.

(e) Any person applying for an annual nonresident hunting/fishing license may provide a certificate of completion or such other evidence of completion the department deems acceptable of the official hunter education or hunter safety course of such person's state of residence if that course shall have been approved by the department. Those persons applying for a hunting license other than a season hunting license shall not be required to exhibit such a certificate or to complete a hunter education course in order to obtain the license.

(f) By rule or regulation, the board shall prescribe a course of instruction in competency and safety in hunting and in the handling of weapons. The board shall also prescribe procedures whereby competent residents of this state shall be certified as hunter education instructors. The board may provide, by rule or regulation, for charging reasonable fees for the issuance by the department of duplicate certificates of completion of a hunter education course and for hunter education courses in order to defray the expenses of conducting such courses. Any such fees shall be deemed as "other income" of the department for purposes of subsection (c) of Code Section 27-1-13.

(g) Any person violating any provision of this Code section shall be guilty of a misdemeanor; provided, however, that this subsection shall not apply to any person under the age of 16.

(h) The requirements of subsections (c) and (d) of this Code section shall not apply to any person hunting on his or her own land or that of his or her parents or legal guardian or to persons permitting a child or ward aged 12 through 15 years to hunt on the parent's or guardian's own land. (Code 1933, § 45-302.1, enacted by Ga. L. 1978, p. 2264, § 1; Ga. L. 1979, p. 1177, § 1; Ga. L. 1988, p. 842, § 2; Ga. L. 1993, p. 779, § 2; Ga. L. 1995, p. 946, § 5; Ga. L. 1996, p. 6, § 27; Ga. L. 2001, p. 1013, § 8; Ga. L. 2009, p. 787, § 3/HB 326.)

**The 2009 amendment**, effective May 5, 2009, substituted "an annual nonresident hunting/fishing license" for "a season nonresident hunting license" near the beginning of the first sentence of subsection (e).

## **27-2-6. Trout license, official Georgia waterfowl license, big game license, and alligator hunting license.**

(a) It shall be unlawful for any person who has attained the age of 16 years to fish for or possess mountain trout or to fish in any waters

designated as trout waters or trout streams pursuant to Code Section 27-4-51 unless such person has in his or her possession a trout license in addition to his or her fishing license.

(b) It shall be unlawful for any person who has attained the age of 16 years to hunt or possess big game unless such person has in his or her possession a big game license in addition to the required hunting license; provided, however, that all nonresidents, regardless of age, must possess a nonresident hunting/fishing license along with any harvest records required by law or regulation to hunt big game in this state.

(c) It shall be unlawful for any person who has attained the age of 16 years to hunt ducks, geese, or swans unless such person has in his or her possession an official Georgia waterfowl license in addition to the required hunting license.

(d) It shall be unlawful for any person who has attained the age of 16 years to hunt alligators unless such person has in his or her possession an alligator hunting license in addition to the required hunting license; provided, however, that this subsection shall not apply to lifetime license holders.

(e) No resident of this state shall be required to obtain a trout license, official Georgia waterfowl license, or big game license to hunt, fish, or trap on premises owned by him or her or his or her immediate family.

(f) Any visitor to a state park, whether a resident or nonresident of Georgia, shall not be required to purchase a trout license when fishing in impounded waters on lands owned or leased by the department. (Ga. L. 1971, p. 38, § 1; Ga. L. 1973, p. 274, § 2; Code 1933, § 45-302, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 21; Ga. L. 1978, p. 2290, § 5; Ga. L. 1979, p. 1255, § 5; Ga. L. 1979, p. 1320, § 2; Ga. L. 1989, p. 506, § 2; Ga. L. 1998, p. 783, § 7; Ga. L. 1998, p. 1550, § 2; Ga. L. 2000, p. 136, § 27; Ga. L. 2001, p. 1013, § 9; Ga. L. 2003, p. 654, § 6; Ga. L. 2009, p. 787, § 4/HB 326.)

**The 2009 amendment**, effective May 5, 2009, substituted “hunting/fishing license” for “hunting license” in the proviso of subsection (b).

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, limiting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

**27-2-7. Powers of department as to making and entering into agreements relating to hunting license reciprocity.**

(a) The department is authorized to make and enter into agreements, from time to time, with the proper authorities of the States of Alabama, Florida, South Carolina, North Carolina, and Tennessee whereby a citizen of the State of Georgia who owns farm lands in such adjoining states may purchase a resident hunting license in the state in which his land is situated which will permit said Georgia citizen to hunt on his own land in the adjoining state without purchasing a nonresident hunting license in that state. The department is authorized to reciprocate this courtesy and issue a resident hunting license in Georgia to citizens of such adjoining states who own farm lands in Georgia, permitting such citizens to hunt on their own land in Georgia without purchasing a nonresident hunting/fishing license.

(b) The department is also authorized to enter into agreements, from time to time, with the proper authorities of the States of Alabama, Florida, South Carolina, North Carolina, and Tennessee whereby a valid hunting license issued by the State of Georgia will be accepted and honored, as and in lieu of a hunting license for the respective state so agreeing, for hunting waterfowl only, on the banks and in the waters of the lakes, rivers, and streams lying between the State of Georgia and such adjoining state or partly within the boundaries of both the State of Georgia and the adjoining state. In turn, valid licenses issued by the respective state shall be accepted and honored, as and in lieu of a Georgia hunting license, for hunting waterfowl only, on the banks and in the waters of such lakes, rivers, and streams.

(c) The department is authorized to make and enter into agreements, from time to time, with the proper authorities of the States of Alabama, Florida, North Carolina, South Carolina, and Tennessee regarding nonresident hunting/fishing license fees, seasons, and bag limits; provided, however, that such seasons and bag limits for nonresident hunters shall not be less restrictive than those which control Georgia residents; and provided, further, that nonresident license fees in Georgia shall not be less than the amount established in Code Section 27-2-23 for a small game hunting license and for a big game hunting license.

(d) If the commissioner determines that any of the States of Alabama, Florida, North Carolina, South Carolina, and Tennessee does not have an existing reciprocal agreement governing nonresident fishing or small game hunting licenses with the State of Georgia and has a fee for a nonresident fishing or small game hunting license or its equivalent, which substantially differs from the comparable fee which Georgia charges a citizen of that contiguous state, then the commissioner,

notwithstanding the fees specified in Code Section 27-2-23, and in order to encourage the reduction of the excessive fee or the entering into of a reciprocal agreement, shall be authorized to adjust the nonresident fishing or small game hunting license fee as applied to citizens of that contiguous state, to an amount equal to the fee a Georgia citizen is required to pay to fish or hunt in that contiguous state. (Ga. L. 1952, p. 389, § 2; Ga. L. 1955, p. 483, § 21; Code 1933, § 45-108, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1979, p. 678, § 13; Ga. L. 1983, p. 837, § 1; Ga. L. 1984, p. 22, § 27; Ga. L. 1988, p. 842, § 3; Ga. L. 2009, p. 787, § 5/HB 326; Ga. L. 2010, p. 878, § 27/HB 1387.)

**The 2009 amendment**, effective May 5, 2009, in subsection (a), substituted “hunting/fishing license” for “hunting license” at the end of the last sentence; and, in subsection (c), substituted “hunting/fishing license” for “hunting license” near

the middle and inserted “and” near the end.

**The 2010 amendment**, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, lim-

iting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

#### 27-2-14. (For effective date, see note) **Liberation-of-wildlife and liberation-of-domestic fish permits.**

**Delayed effective date.** — Ga. L. 2004, p. 948, § 3-1(c), provides that the 2004 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assembly. This Code section, as amended, is not set out in the Code owing to the delayed effective date. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the

General Assembly. After the appropriation is made this Code section will read as follows: “It shall be unlawful for any person to liberate any wildlife within this state or to liberate domestic fish or pacific white shrimp (*Penaeus vannamei*) except into private ponds, except under permit from the department; provided, however, that pen raised quail may be released for purposes of training pointing, flushing, and retrieving dogs.”

#### 27-2-17. **Falconry permits; duties, permitted acts, and prohibitions pertaining to permit holders.**

(a) It shall be unlawful for any person to trap, take, transport, or possess raptors for falconry purposes unless the person first procures, in addition to a valid hunting license, a valid falconry permit as provided in Code Section 27-2-23, provided that it shall not be unlawful for a nonresident to transport or possess raptors in this state for falconry purposes if the person has a nonresident hunting/fishing license, as provided in Code Section 27-2-23, and a falconry license or

permit from the state of residence of the person, which state meets federal falconry standards.

(b) There shall be three classes of falconry permits: apprentice, general, and master. Permittees shall comply with all standards, requirements, and limitations applicable to each class as provided in 50 C.F.R. Part 21, as now or hereafter amended. Prior to the issuance of any falconry permit, the applicant shall be required to answer correctly 80 percent of the questions on an examination administered by the department relating to the basic biology, care, and handling of raptors; the literature on raptors; and the laws and regulations pertaining to raptors. Permits to take, transport, or possess raptors shall be issued in accordance with the standards, requirements, and limitations set forth in 50 C.F.R. Parts 17 and 21, as now or hereafter amended.

(c) It shall be unlawful for any person to trap, transport, or possess a golden eagle (*Aquila chrysaetos*) unless authorized as provided in 50 C.F.R. Part 22, as now or hereafter amended.

(d) It shall be unlawful for a falconer to sell, purchase, or barter or to offer to sell, purchase, or barter any raptor to another falconer unless the raptor is marked on the metatarsus by a seamless, numbered band provided by the United States Fish and Wildlife Service, as required by 50 C.F.R. Part 21.

(e) No raptor may be possessed under authority of a falconry permit unless the permittee has a properly completed federal Form 3-186A Migratory Bird Acquisition/Disposition Report for each bird possessed.

(f) A raptor may be transported or held in temporary facilities, which shall be equipped with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.

(g) Any person possessing raptors before July 1, 1992, in excess of the number allowed by his falconry permit may keep the extra raptors. All such raptors shall be identified by raptor markers furnished by the United States Fish and Wildlife Service and cannot be replaced, nor can any additional raptors be obtained, until the number possessed is at least one less than the total number authorized by said permit.

(h) A person who possesses a lawfully acquired raptor before July 1, 1992, and who fails to meet the falconry permit requirements shall be allowed to retain the raptors. All such birds shall be identified with raptor markers furnished by the United States Fish and Wildlife Service and cannot be replaced if death, loss, release, or escape occurs.

(i) It shall be unlawful for any person to alter, counterfeit, or deface a raptor marker furnished by the United States Fish and Wildlife Service; provided, however, that persons possessing a falconry permit

may remove the rear tab and may smooth any imperfect surface, as long as the integrity of the marker and numbering is not affected.

(j) No permittee may take, purchase, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless such permittee submits a properly completed federal Form 3-186A Migratory Bird Acquisition/Disposition Report to the issuing office of the United States Fish and Wildlife Service and sends a copy of such form to the department within five calendar days of such transaction.

(k) All persons applying for a falconry permit and all permitted falconers shall, by application for said permit, be deemed to agree to make their raptor housing facilities and falconry equipment (including but not limited to mews, weathering areas, jesses, leashes and swivels, bath containers, perches, and weighing devices) available at reasonable times for inspection and certification as to compliance with federal standards by authorized agents of the department; provided, however, that no falconry permit may be issued until the applicant's raptor housing facilities and falconry equipment have been so inspected and certified.

(l) A falconry permittee shall obtain written authorization from the department before any species not indigenous to Georgia is intentionally released to the wild, at which time the released bird's marker, if any, shall be removed and surrendered to the department. The marker, if any, from an intentionally released bird which is indigenous to Georgia shall also be removed and surrendered to the department. A standard federal bird band shall be attached to such birds by the department or by a federal bird bander authorized by the United States Fish and Wildlife Service, whenever possible.

(m) A raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee only if that person is otherwise authorized to possess raptors and only if the raptor is accompanied at all times by a properly completed federal Form 3-186A Migratory Bird Acquisition/Disposition Report designating the permittee as the possessor of record and by a signed and dated statement from the permittee authorizing the temporary possession.

(n) Feathers that are molted or those feathers from birds held in captivity that die may be retained and exchanged by permittees only for imping purposes.

(o) It shall be unlawful for apprentice falconers to take young raptors not yet capable of flight (eyasses). General or master falconers may take such birds only between May 1 and June 30, provided that no more than two such birds may be taken by any permittee during this period.

(p) First-year (passage) raptors may be taken by permittees only from September 1 through December 31.

(q) Marked raptors may be retrapped at any time by holders of valid falconry permits.

(r) Only American kestrels (*Falco sparverius*) and great-horned owls (*Bubo virginianus*) may be taken when over one year old, except that any raptor taken under a depredation (or special purpose) permit, other than endangered or threatened species, may be used for falconry by general and master falconers.

(s) It shall be lawful for a falconer meeting the requirements of this Code section to take small game with raptors, provided that the falconer observes the provisions of this Code section and the laws and regulations regulating the taking of small game.

(t) Raptor propagation and activities associated with raptor propagation are permitted in accordance with the provisions of 50 C.F.R. Part 21, as now or hereafter amended. No additional state permit is required; provided, however, that all persons engaging in such activities shall submit one copy of each federally required report to the department at the time such report is submitted to federal authorities.

(u) Holders of Georgia falconry permits may transport the raptors held under their permits within this state, may remove the raptors from this state for meets, trials, and hunting in other states, and may bring such raptors back into this state without obtaining a Georgia importation permit; provided, however, that any person transporting a raptor into another state shall obtain any permit or license required for his activities by the state into which he transports the raptor.

(v) A falconry permittee may import into this state a legally acquired raptor without obtaining a Georgia wildlife importation permit if a properly completed federal Form 3-186A Migratory Bird Acquisition/Disposition Report shall accompany each raptor during importation and the permittee complies with all applicable requirements of the state of origin.

(w) It shall be lawful for a nonresident to take or attempt to take raptors from the wild in this state if the nonresident has a valid general or master level falconry permit from such person's state of residence and a valid Georgia nonresident hunting/fishing license and if such person's state of residence provides the same privileges to residents of Georgia. (Ga. L. 1968, p. 497, § 20; Code 1933, § 45-318, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, §§ 34, 35; Ga. L. 1984, p. 568, §§ 1, 2; Ga. L. 1992, p. 2863, § 3; Ga. L. 1993, p. 91, § 27; Ga. L. 2009, p. 787, § 6/HB 326.)

**The 2009 amendment**, effective May 5, 2009, substituted "hunting/fishing li-

cense" for "hunting license" near the end of subsections (a) and (w).

**27-2-20.1. (Effective January 1, 2013) Required participation in Saltwater Information Program.**

It shall be unlawful for any person required to obtain a fishing license as provided in Code Section 27-2-1 to fish in the salt waters of this state without participating in the Saltwater Information Program. Participation in such program shall require the completion of a screening questionnaire prior to obtaining a free Georgia salt water fishing endorsement and the possession of such endorsement or other evidence of participation while salt water fishing. (Code 1981, § 27-2-20.1, enacted by Ga. L. 2012, p. 739, § 2/HB 869.)

**Effective date.** — This Code section becomes effective January 1, 2013.

**27-2-21. Field and retriever trials; permits; hunting licenses.**

(a) It shall be unlawful for any person to conduct a field or retriever trial without first obtaining a permit, at no cost, from the department. In trials conducted with such a permit, the species of wildlife specified on the permit may be set or pursued by dogs, but such wildlife may not be taken except during the open season for such species of wildlife. The person conducting such a field trial shall require all participants therein to register.

(b) It shall be unlawful for any person to participate in a field or retriever trial unless a permit for such trial has been issued by the department and unless the person is registered as a participant in the trial.

(c) All persons participating in a field or retriever trial will be required to have an appropriate resident hunting license or nonresident hunting/fishing license unless the field or retriever trial is recognized by a nationally registered field trialing organization or unless the field or retriever trial is conducted by a local field trialing organization based in the State of Georgia which is recognized by the department as being qualified to conduct such trial.

(d) Notwithstanding any other provision of this Code section, properly marked pen raised mallard ducks and properly marked pen raised quail may be killed by any person registered as a participant in a permitted field trial. (Code 1933, § 45-327, enacted by Ga. L. 1978, p. 816, § 37; Ga. L. 1984, p. 537, § 2; Ga. L. 1988, p. 842, § 4; Ga. L. 1989, p. 231, § 1; Ga. L. 2009, p. 787, § 7/HB 326.)

The 2009 amendment, effective May 5, 2009, substituted “hunting license or nonresident hunting/fishing license” for “or nonresident hunting license” near the middle of subsection (c).

### 27-2-23. License, permit, tag, and stamp fees.

Fees for licenses, permits, tags, and stamps required by this title shall be as follows:

(1) Hunting licenses:

(A) Resident hunting license	Annual	\$ 10.00
(B) Resident hunting license	Two-year	18.00
(C) Resident big game license	Annual	9.00
(D) Nonresident big game license	Annual	195.00
(E) Nonresident big game license	Three-day	90.00
(F) Resident big game license	Two-year	16.00
(G) Shooting preserve hunting license valid for residents and nonresidents	Two-year	12.00
(H) Commercial fox hunting preserve license	Season	60.00
(I) Commercial fox breeder license	Season	60.00
(J) Waterfowl license valid for residents and nonresidents	Annual	5.50
(K) Waterfowl license valid for residents and nonresidents	Two-year	11.00
(L) Georgia migratory bird license	Annual	Free
(2) Hunting and fishing licenses:		
(A) Resident hunting/fishing license	Annual	17.00
(B) Resident hunting/fishing license	Two-year	31.00
(C) Nonresident hunting/fishing license	Three-day	20.00
(D) Resident hunting/fishing license	Three-day	3.50
(E) Nonresident hunting/fishing license	Annual	100.00
(3) Sportsman's licenses:		
(A) Resident sportsman's license	Annual	55.00
(B) Resident sportsman's license	Two-year	105.00

## (4) Recreational fishing licenses:

(A) Resident fishing license	Annual	9.00
(B) Resident fishing license	Two-year	16.00
(C) Nonresident fishing license	Annual	45.00
(D) Resident trout license	Annual	5.00
(E) Resident trout license	Two-year	10.00
(F) Resident trout license	Three-day	3.50
(G) Nonresident trout license	Annual	20.00
(H) Nonresident trout license	Three-day	10.00
(I) Salt-water shore fishing license	One-day	5.00

## (5) Trapping licenses:

(A) Resident commercial trapping license	Annual	30.00
(B) Nonresident commercial trapping license	Annual	295.00

## (6) Commercial fishing licenses:

(A) Resident commercial fishing license	Season	12.00
(B) Nonresident commercial fishing license	Season	118.00
(C) Resident commercial crabbing license	Season	12.00
(D) Nonresident commercial crabbing license	Season	118.00

## (7) Fur, hide, and pelt licenses:

(A) Resident fur dealer license	Annual	295.00
(B) Nonresident fur dealer license	Annual	415.00
(C) Fur dealer's agent license	Annual	180.00

## (8) Miscellaneous licenses and permits:

(A) Retail fish dealer license	Annual	10.00
(B) Wholesale fish dealer license	Annual	59.00
(C) Resident game-holding permit	Annual	5.00
(D) Commercial quail breeder permit	Annual	30.00
(E) Scientific collecting permit	Annual	50.00
(F) Wildlife exhibition permit	Annual	59.00

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(G) Commercial shooting preserve license	Annual	150.00
(H) Private shooting preserve license	Annual	50.00
(I) Blanket commercial shooting preserve license	Annual	500.00
(J) Commercial fish hatchery license	Annual	59.00
(K) Catch-out pond license	Annual	236.00
(L) Soft-shell crab dealer license	Annual	10.00
(M) Resident taxidermist license	Three-year	150.00
(N) Nonresident taxidermist license	Three-year	500.00
(O) Falconry permit	Three-year	30.00
(P) Commercial alligator farming license	Annual	50.00
(Q) Resident alligator hunting license	Annual	50.00
(R) Nonresident alligator hunting license	Annual	200.00
(S) Wild animal license	Annual	236.00
(T) Wild animal auction license	Seven-day	5,000.00
(U) Resident bait dealer license	Season	25.00
(V) Nonresident bait dealer license	Season	150.00

(9) The board is authorized to provide by rule for a fee not to exceed \$19.00 for resident daily, seasonal, or annual use permits, or licenses; a fee of \$38.00 for resident two-year use permits; or a fee not to exceed \$73.00 for nonresident annual use permits or licenses to hunt and fish on or otherwise use specially designated streams, lakes, public fishing areas, or wildlife management areas.

(10) The fees established in subparagraphs (1)(A) through (1)(F), (2)(A), (2)(B), (2)(E), (3)(A), (3)(B), (4)(A), (4)(B), (4)(C), (4)(D), (4)(E), and (4)(G) of this Code section shall be reduced by \$2.75 for each renewal transaction made before the expiration date of the then current license or tag. For purposes of this paragraph, the term "renewal transaction" means the renewal of one or more licenses by a licensee during a single telephone call, Internet session, or on-site visit to a store. (Ga. L. 1916, p. 114, § 2; Ga. L. 1924, p. 101, § 36; Ga. L. 1925, p. 302, § 13; Ga. L. 1931, p. 7, § 25; Ga. L. 1931, p. 173, § 6; Code 1933, §§ 45-206, 45-207, 45-213, 45-304; Ga. L. 1935, p. 379, § 2; Ga. L. 1935, p. 386, § 5; Ga. L. 1937, p. 675, § 2; Ga. L. 1937-38, Ex. Sess., p. 332, § 5; Ga. L. 1939, p. 316, § 1; Ga. L. 1945, p. 315, § 1; Ga. L. 1949, p. 1005, § 1; Ga. L. 1949, p. 1116, § 1; Ga. L. 1949, p. 1188, § 1; Ga. L. 1949, p. 1189, § 1; Ga. L. 1949, p. 1577, §§ 1, 2;

Ga. L. 1951, p. 157, §§ 8-9a; Ga. L. 1952, p. 258, §§ 2, 3; Ga. L. 1953, Jan.-Feb. Sess., p. 521, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 173, § 1; Ga. L. 1955, p. 158, §§ 1, 3, 4; Ga. L. 1955, p. 483, §§ 30, 31; Ga. L. 1959, p. 184, § 1; Ga. L. 1960, p. 974, §§ 2-4; Ga. L. 1966, p. 6, § 1; Ga. L. 1967, p. 634, § 3; Ga. L. 1968, p. 480, § 3; Ga. L. 1968, p. 497, § 9; Ga. L. 1971, p. 38, § 1; Ga. L. 1972, p. 915, § 1; Ga. L. 1973, p. 274, § 1; Ga. L. 1975, p. 1254, § 3; Ga. L. 1976, p. 771, § 2; Ga. L. 1976, p. 1159, § 3; Ga. L. 1976, p. 1674, § 2; Code 1933, § 45-303, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1977, p. 1270, § 6; Ga. L. 1978, p. 816, §§ 23, 24; Ga. L. 1978, p. 1552, § 1; Ga. L. 1979, p. 420, §§ 4-7; Ga. L. 1979, p. 678, § 19; Ga. L. 1979, p. 800, § 5; Ga. L. 1979, p. 1094, § 3; Ga. L. 1981, p. 144, §§ 4-6; Ga. L. 1981, p. 823, §§ 1, 2; Ga. L. 1982, p. 1729, §§ 5-7; Ga. L. 1983, p. 467, § 1; Ga. L. 1983, p. 837, § 2; Ga. L. 1985, p. 913, § 2; Ga. L. 1985, p. 1047, § 3; Ga. L. 1987, p. 179, §§ 4, 5; Ga. L. 1987, p. 469, § 2; Ga. L. 1987, p. 663, § 2; Ga. L. 1988, p. 13, § 27; Ga. L. 1989, p. 506, § 3; Ga. L. 1990, p. 386, § 2; Ga. L. 1990, p. 2422, § 1; Ga. L. 1991, p. 1157, § 1; Ga. L. 1992, p. 470, §§ 1, 5; Ga. L. 1995, p. 156, § 1; Ga. L. 1995, p. 946, § 7; Ga. L. 1998, p. 783, § 9; Ga. L. 2003, p. 654, § 7A; Ga. L. 2005, p. 517, § 1/HB 662; Ga. L. 2009, p. 787, § 8/HB 326; Ga. L. 2012, p. 958, § 1A/SB 464.)

**The 2009 amendment**, effective May 5, 2009, rewrote this Code section.

**The 2012 amendment**, effective July 1, 2012, added subparagraph (4)(I).

**Editor's notes.** — Ga. L. 2009, p. 787, §§ 10, 11, and 12 eliminated the automatic reduction of rates provided by Ga. L. 1992, p. 470, § 5.

## 27-2-30. Establishment of the Wildlife Endowment Fund; limitations on expenditures from the fund.

(a) The General Assembly recognizes that lifetime sportsman license purchasers expect and are entitled to assurance that funds for such licenses will be used throughout their life expectancy to provide quality hunting and fishing experiences. Therefore, the General Assembly declares its intent that lifetime licenses yield annual revenue in perpetuity for the support of wildlife management programs of the department and recognizes that annual income generation is necessary for these licenses to be included in apportionment formulas for federal fish and wildlife funding.

(b) In recognition of its obligations to lifetime sportsman license purchasers, the General Assembly directs the department to establish a fund known as the Wildlife Endowment Fund for receipt of funds of an amount equal to that generated by the sale of lifetime sportsman licenses listed in subsection (e) of Code Section 27-2-3.1. Further, the General Assembly declares its intent to appropriate to the Wildlife Endowment Fund each fiscal year an amount equal to that generated by the prior year's sales of lifetime licenses. The fund is also authorized

to accept contributions from private individuals and entities. All funds appropriated and those contributed to the Wildlife Endowment Fund shall be deemed expended and contractually obligated and shall not lapse to the general fund.

(c) The commissioner of natural resources shall be the trustee of the Wildlife Endowment Fund with full authority over the administration of the fund. The state treasurer shall be the custodian of the Wildlife Endowment Fund and shall invest its assets in accordance with Georgia laws and shall report to the department the annual income and contributions to the fund. The intent of the General Assembly is that such income from the fund be appropriated annually to the department for the purposes stated in subsection (d) of this Code section.

(d) The Wildlife Endowment Fund constitutes a special trust derived from a contractual relationship between the state and the members of the public whose lifetime license purchases contribute to the fund. In recognition of such special trust, the following limitations and restrictions are placed on expenditures from the fund:

(1) No expenditures or disbursements from appropriations equivalent to the income or proceeds derived from the sales of Types I and Y lifetime sportsman's licenses shall be made for any purpose until the respective holders of such licenses attain the age of 16 years. The state treasurer, as custodian of the fund, shall determine actuarially from time to time the amount of such proceeds which remains encumbered by and the amount of such proceeds which is free of this restriction and shall advise the commissioner of such information. For such purposes, the commissioner shall cause the amount of proceeds from Type I licenses to be identified and proceeds from Type Y licenses to be accompanied by information as to the ages of the license recipients;

(2) No expenditure or disbursement may be made from the principal and interest of the fund except as otherwise provided by law;

(3) The principal and interest of the fund must be spent only for the conservation and management of wildlife and fisheries resources and the acquisition of habitat upon which such resources are dependent;

(4) No such habitat acquired with money from the fund shall be voluntarily transferred to the federal government or any international agency or organization;

(5) The trustee of the Wildlife Endowment Fund may accumulate the income of the fund and may direct expenditures from the income of the fund; and

(6) Expenditure of the income derived from the fund must be made with the approval of the trustee in accordance with the provisions of

the General Appropriations Act. The fund is subject to the oversight of the state treasurer.

(e) The fund and income from it do not take the place of other state appropriations or agency receipts but are supplemental to other funds and appropriations made available to the department for carrying out its responsibilities under this title.

(f) If the Department of Natural Resources is dissolved, the chief executive officer of the succeeding agency shall assume the trusteeship of the fund and shall be bound by all the limitations and restrictions placed by this Code section on expenditures from the fund. No repeal or modification of this Code section alters the fundamental purposes to which the fund is applied. No future dissolution of the Department of Natural Resources or substitution of any agency in its stead shall invalidate any lifetime license issued in accordance with this title. (Code 1981, § 27-2-30, enacted by Ga. L. 1998, p. 826, § 3; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and

“Fiscal Services” in the second sentence of subsection (c), paragraph (d)(1), and paragraph (d)(6).

## **27-2-31. Wildlife control permits.**

(a) The department is authorized to issue wildlife control permits authorizing the permittee to trap, transport and release, or kill wildlife and feral hogs where such action is otherwise prohibited by law or regulation:

(1) When the department determines that there is a substantial likelihood the presence of such wildlife or feral hogs will endanger or cause injury to persons or will destroy or damage agricultural crops, domestic animals, buildings, structures, or other personal property;

(2) For the control of white-tailed deer on airport property; provided, however, that permits shall be issued under this paragraph for purposes of public safety, and the control of white-tailed deer for other purposes and the removal of black bear shall be as provided in Code Sections 27-2-18 and 27-3-21, respectively;

(3) For fur-bearing animals, as defined in paragraph (31) of Code Section 27-1-2, to implement a bona fide wildlife management plan that has been approved by the department; and

(4) For feral hogs, provided that:

(A) All permitted activities must comply with all rules and regulations of the Department of Agriculture; and

(B)(i) No person shall release any trapped or transported feral hog into any area that is not fenced to prevent the escape of such feral hog onto the land of another.

(ii) Any person who violates division (i) of this subparagraph shall, upon conviction thereof, be guilty of a misdemeanor of a high and aggravated nature and shall be punished as provided by Code Section 17-10-4; provided, however, that if a fine is imposed pursuant to such Code section, such fine shall be not less than \$1,500.00.

(iii) Any license or permit previously issued under this title to any person convicted of violating division (i) of this subparagraph shall by operation of law be revoked and shall not be reissued for a period of three years after the date of such conviction. The licensee or permit holder shall be notified of the revocation personally or by a letter sent by certified mail or statutory overnight delivery to the name and address indicated on the application for the license or permit, or both, or to the Secretary of State as provided in Code Section 27-2-24.

(b) In issuing a wildlife control permit, the department shall prescribe the method, means, species, numbers, time limits, location, and any other conditions it deems necessary to ensure the continued viability of the wildlife population involved and to ensure that the public safety and interest are not compromised.

(c) Nothing in this Code section shall be construed to authorize the taking of any species which is protected by the federal Endangered Species Act of 1973, Public Law 93-205, as amended, or under any state law or regulation which has as its purpose the protection of endangered or threatened species. (Code 1981, § 27-2-31, enacted by Ga. L. 2000, p. 418, § 1; Ga. L. 2001, p. 4, § 27; Ga. L. 2011, p. 468, § 1/HB 485.)

**The 2011 amendment**, effective July 1, 2011, rewrote paragraph (a)(4), which read: "For feral hogs, provided that all

permitted activities must comply with all rules and regulations of the Georgia Department of Agriculture."

#### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required.** — Offenses arising from a violation of O.C.G.A. § 27-2-31 are offenses for which finger-

printing is required. 2011 Op. Att'y Gen. No. 11-5.

## ARTICLE 2

### WILDLIFE VIOLATOR COMPACT

#### **27-2-41. Rules and regulations authorized.**

The Board of Natural Resources shall make and publish in print or electronically such rules and regulations, not inconsistent with law, as it deems necessary to carry out the purposes of this article. (Code 1981, § 27-2-41, enacted by Ga. L. 2002, p. 1179, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted "in print or electronically" in the middle of this Code section.

## CHAPTER 3

### WILDLIFE GENERALLY

#### **Article 1**

##### **Hunting**

###### **PART 1**

###### **GENERAL PROVISIONS**

###### **Sec.**

- 27-3-1.1. Acts prohibited on wildlife management areas.
- 27-3-2. Hunting at night.
- 27-3-4. Legal weapons for hunting wildlife generally.
- 27-3-6. Possession of firearm while hunting with bow and arrow.
- 27-3-9. Unlawful enticement of game.
- 27-3-15. Seasons and bag limits; promulgation of rules and regulations by board; possession of more than bag limit; reporting number of deer killed.
- 27-3-19.1. Regulation of the exporting, farming, and selling of fresh-water turtles.
- 27-3-24. Restrictions on hunting feral hogs.
- 27-3-26. Hunting bears; restrictions; penalties.
- 27-3-28. Person may take possession of native wildlife which has been killed by a motor vehicle.

#### **PART 2**

##### **DEER**

- 27-3-47. Collision with deer by motor vehicle [Repealed].

#### **Article 2**

##### **Trapping, Trappers, and Fur Dealers**

- 27-3-63. General offenses and penalties.

#### **Article 4**

##### **Shooting Preserves**

- 27-3-114. Laws and regulations applicable to shooting preserves; requirements as to hunting licenses.

#### **Article 8**

##### **Fertility Control on Wildlife**

- 27-3-180. Findings and declarations.
- 27-3-181. Use of fertility control of wildlife.
- 27-3-182. Permit application for applying fertility control to wildlife.
- 27-3-183. Rules and regulations.
- 27-3-184. Wildlife fertility control permits; cease and desist orders; possession of wildlife.

Sec.

27-3-185. Penalties.

## ARTICLE 1

### HUNTING

**Cross references.** — Liability of land-owner or hunter for wildlife injured crossing public roadway, § 51-1-52.

#### PART 1

##### GENERAL PROVISIONS

###### **27-3-1.1. Acts prohibited on wildlife management areas.**

It shall be unlawful for any person on any wildlife management area owned or operated by the department:

- (1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129;
- (2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129;
- (3) To be under the influence of drugs, intoxicating liquors, beers, or wines. The determination of whether any person is under the influence of drugs or intoxicating liquors, beers, or wines may be made in accordance with Code Section 27-3-7;
- (4) To hunt within 50 yards of any road which receives regular maintenance for the purpose of public vehicular access;
- (5) To target practice, except where an authorized shooting range is made available by the department, and then only in a manner consistent with the rules for shooting ranges promulgated by the board;
- (6) To drive a vehicle around a closed gate, cable, sign, or other structure or device intended to prevent vehicular access to a road entering onto or within such an area;

- (7) To hunt within any posted safety zone;
- (8) To camp upon or drive a motor vehicle over any permanent pasture or area planted in crops;
- (9) While hunting bears in any such area opened to bear hunting, to kill a female bear with a cub or cubs or to kill a cub weighing less than 75 pounds;
- (10) To fail to report if he or she kills a deer, bear, or turkey in the manner specified by the rules of the department for that wildlife management area on the date killed to the state game and fish checking station on the area;
- (11) To construct any tree stand or to hunt from any tree stand except a portable or natural tree stand; or
- (12) To trap except with a special trapping permit issued by the department. (Code 1981, § 27-3-1.1, enacted by Ga. L. 1982, p. 1729, § 8; Ga. L. 1993, p. 91, § 27; Ga. L. 1996, p. 1134, § 1; Ga. L. 2003, p. 140, § 27; Ga. L. 2010, p. 963, § 2-13/SB 308.)

**The 2010 amendment**, effective June 4, 2010, inserted “other than a handgun, as such term is defined in Code Section 16-11-125.1,” near the beginning of paragraphs (1) and (2); added “or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129” at the end of paragraph (1); and added “or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129” at the

end of paragraph (2). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecutions.

**Law reviews.** — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

#### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-1.1 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att’y Gen. No. 10-6.

#### 27-3-2. Hunting at night.

It shall be unlawful to hunt at night any game bird or game animal in this state except for alligators, raccoons, opossums, foxes, and bobcats. Any light used to hunt raccoons, opossums, foxes, or bobcats shall be carried on the person of a hunter, affixed to a helmet or hat worn by a hunter, or be part of a belt system worn by a hunter. (Ga. L. 1911, p. 137, § 17; Code 1933, § 45-322; Ga. L. 1949, p. 1005, § 1; Ga.

L. 1952, p. 362, § 1; Ga. L. 1955, p. 483, § 67; Ga. L. 1962, p. 671, § 1; Ga. L. 1968, p. 497, § 19; Code 1933, § 45-502, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 40; Ga. L. 2003, p. 654, § 8; Ga. L. 2009, p. 48, § 1/SB 111.)

**The 2009 amendment**, effective July 1, 2009, substituted the present last sentence for the former last two sentences, which read: "Alligators may be hunted with a light which does not exceed 12 volts. Raccoons, opossums, foxes, and bob-

cats shall not be hunted with lights, except that a light which does not exceed six volts or a fuel-type lantern may be carried by hand by a hunter or worn on the hunter's belt and used for locating such animals."

#### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-2 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

#### 27-3-4. Legal weapons for hunting wildlife generally.

It shall be unlawful to hunt wildlife with any weapon, except that:

- (1) Longbows, recurve bows, crossbows, and compound bows may be used for taking small game, feral hogs, or big game. Arrows for hunting deer, bear, and feral hogs must be broadhead type;
- (2) During primitive weapon hunts or primitive weapons seasons:
  - (A) Longbows, recurve bows, crossbows, compound bows, muzzleloading firearms of .44 caliber or larger, and muzzleloading shotguns of 20 gauge or larger loaded with single shot may be used; and
  - (B) Youth under 16 years of age may hunt deer with any firearm legal for hunting deer;
- (3) Firearms for hunting deer, bear, and feral hogs are limited to 20 gauge shotguns or larger shotguns loaded with slugs or buckshot (except that no buckshot is permitted on state wildlife management areas unless otherwise specified), muzzleloading firearms of .44 caliber or larger, and center-fire firearms .22 caliber or larger; provided, however, that firearms for hunting feral hogs, other than those weapons specified in this paragraph, may be authorized by rule or regulation of the board. Bullets used in all center-fire rifles and handguns must be of the expanding type;
- (4) Weapons for hunting small game shall be limited to shotguns with shot shell size of no greater than 3 1/2 inches in length with No. 2 lead shot or smaller or federally approved nontoxic shot size of F or smaller shot, .22 caliber or smaller rimfire firearms, air rifles, muzzleloading firearms, longbows, recurve bows, crossbows, and

compound bows; provided, however, that nothing contained in this paragraph shall permit the taking of protected species;

(5)(A) For hunting deer, feral hogs, and bear, shotguns shall be limited to a capacity of not more than five shells in the magazine and chamber combined. If a plug is necessary to so limit the capacity, the plug shall be of one piece, incapable of being removed through the loading end of the magazine.

(B) For hunting all other game animals, shotguns shall be limited to a capacity of not more than three shells in the magazine and chamber combined. If a plug is necessary to so limit the capacity, the plug shall be of one piece, incapable of being removed through the loading end of the magazine;

(6) It shall be unlawful to hunt turkey with any weapons except shotguns using No. 2 shot or smaller, muzzleloading firearms, longbows, crossbows, recurve bows, or compound bows. Any person taking turkey in violation of this paragraph shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor, except that a fine imposed for such violation shall not be less than \$250.00;

(7) Weapons for hunting alligators shall be limited to hand-held ropes or snares, snatch hooks, harpoons, gigs, or arrows with restraining lines attached. Lawfully restrained alligators may be killed with any caliber handgun or bangstick and shall be killed immediately before transporting;

(8) There are no firearms restrictions for taking nongame animals or nongame birds; and

(9) The use of silencers for hunting within this state is prohibited. (Code 1933, § 45-503, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 42; Ga. L. 1979, p. 591, § 1; Ga. L. 1979, p. 678, § 25; Ga. L. 1979, p. 828, § 1; Ga. L. 1981, p. 730, § 1; Ga. L. 1981, p. 798, § 6; Ga. L. 1983, p. 664, §§ 1, 2; Ga. L. 1984, p. 22, § 27; Ga. L. 1989, p. 1552, § 2; Ga. L. 1990, p. 8, § 27; Ga. L. 1990, p. 380, § 1; Ga. L. 1992, p. 2863, § 5; Ga. L. 1994, p. 496, § 2; Ga. L. 1995, p. 437, § 1; Ga. L. 1998, p. 592, § 1; Ga. L. 1998, p. 783, § 11; Ga. L. 1999, p. 81, § 27; Ga. L. 2001, p. 1013, § 12; Ga. L. 2002, p. 1179, § 4; Ga. L. 2003, p. 654, § 9; Ga. L. 2006, p. 226, § 2/HB 338; Ga. L. 2010, p. 952, § 3/SB 474.)

**The 2010 amendment**, effective June 3, 2010, substituted the present provisions of paragraph (2) for the former provisions, which read: "During primitive weapon hunts or primitive weapons sea-

sons, longbows, recurve bows, crossbows, compound bows, muzzleloading firearms of .44 caliber or larger, and muzzleloading shotguns of 20 gauge or larger loaded with single shot may be used;".

**27-3-6. Possession of firearm while hunting with bow and arrow.**

It shall be unlawful for any person to possess any center-fire or rimfire firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during a primitive weapons season for deer or to possess a loaded handgun while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during primitive weapons season for deer unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129. (Code 1933, § 45-505, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1998, p. 783, § 12; Ga. L. 2010, p. 963, § 2-14/SB 308.)

**The 2010 amendment**, effective June 4, 2010, inserted “other than a handgun, as such term is defined in Code Section 16-11-125.1,” near the beginning and added “or to possess a loaded handgun while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzleloading firearm during primitive weapons season for deer unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129” at the end. See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecutions.

**Law reviews.** — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-6 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att’y Gen. No. 10-6.

**27-3-9. Unlawful enticement of game.**

(a) As used in this Code section, the term:

(1) “Northern zone” means the northern zone for hunting deer with firearms as established pursuant to subsection (c) of Code Section 27-3-15.

(2) “Southern zone” means the southern zone for hunting deer with firearms as established pursuant to subsection (c) of Code Section 27-3-15.

(a.1) It shall be unlawful for any person to place, expose, deposit, distribute, or scatter any corn, wheat, or other grains, salts, apples, or

other feeds or bait so as to constitute a lure or attraction or enticement for any game bird or game animal on or over any area where hunters are or will be hunting.

(a.2) Nothing in subsection (a.1) of this Code section shall prohibit any person from placing, exposing, depositing, distributing, or scattering any corn, wheat, or other grains, salts, apples, or other feeds or bait so as to constitute a lure or attraction or enticement for deer on lands that are not under the ownership or control and management of the state or federal government; provided, however, that any such lure or attraction or enticement shall not cause hunting on any adjoining property to be prohibited under subsection (b) of this Code section.

(b)(1) Except as otherwise provided by law or regulation, it shall be unlawful for any person to hunt any game bird or game animal upon, over, around, or near any place where any corn, wheat, or other grains, salts, apples, or other feed or bait has been placed, exposed, deposited, distributed, or scattered so as to constitute a lure, attraction, or enticement to such birds or animals. It shall also be unlawful to hunt any game animal or game bird upon, over, around, or near any such place for a period of ten days following the complete removal of all such feed or bait.

(2) The prohibitions of paragraph (1) of this subsection shall not apply to:

(A) The hunting of deer in the northern zone, other than on lands under the ownership or control and management of the state or federal government, if the hunter is at least 200 yards away from and not within sight of such feed or bait; and

(B) The hunting of deer in the southern zone, other than on lands under the ownership or control and management of the state or federal government, if the hunter has written permission of the landowner to hunt upon, over, around, or near such feed or bait, except as otherwise provided by paragraph (3) of this subsection.

(3)(A) The board may by rule or regulation restrict the feeding, baiting, or hunting of deer upon, over, around, or near such feed or bait in any county wherein there is a documented occurrence of a communicable disease in deer and in any county adjoining such county. Such restriction may be imposed in such county and any adjoining county for a period of up to and including one year and may be extended for additional periods of up to and including two years each upon documentation that the communicable disease is still present in deer in such county. No person shall feed, bait, or hunt deer in violation of any restriction imposed pursuant to this paragraph.

(B) The department shall give notice of such restriction by mail or electronic means to each person holding a current license to hunt

whose last known address is within a restricted county. The department may place or designate the placement of signs and markers so as to give notice of such restriction.

(4) Any person who takes any big game animal, other than deer, within 200 yards of any place where any corn, wheat, or other grains, salts, apples, or other feed or bait has been placed, exposed, deposited, distributed, or scattered so as to constitute a lure, attraction, or enticement for any game bird or game animal shall, upon conviction of thereof, be guilty of a misdemeanor of a high and aggravated nature and shall be punished as provided by Code Section 17-10-4.

(c) When a conservation ranger is aware or becomes aware that a clearly identifiable area of land or field is baited for doves in such a manner that hunting thereon would be a violation of paragraph (1) of subsection (b) of this Code section, it shall be the duty of the conservation ranger to require the owner or other person having lawful possession or control of the baited area of land or field to remove such bait. The conservation ranger shall require such owner or other person to erect on the area of land or field signs having printed thereon the words: "No Hunting, Baited Field." Such signs shall remain for ten days after bait is removed. The printing on such signs shall be clearly visible to a person with normal eyesight from a distance of at least 50 yards. A sufficient number of such signs shall be erected to provide reasonable notice to hunters that the field or area is baited for doves. If the conservation ranger cannot locate the owner or other person having lawful possession or control of the area of land or field baited for doves, it shall be the duty of such conservation ranger to erect such signs. The owner or other person having lawful possession or control of an area or field baited for doves who fails to comply with an order of a conservation ranger requiring the removal of bait or the erection of signs, or both, as required by this subsection shall be guilty of a misdemeanor. When a conservation ranger is aware that a clearly identifiable area of land or field is baited for doves in such a manner that hunting thereon would be a violation of paragraph (1) of subsection (b) of this Code section prior to any such violation, no charge may be brought against any person under paragraph (1) of subsection (b) of this Code section unless the provisions of this subsection have been followed. Nothing in this subsection shall be construed to preclude the owner or other person having lawful possession or control of a baited area or field from being charged with and convicted of a violation of subsection (a.1) of this Code section. Nothing in this subsection shall be construed to preclude a person's being charged with and convicted of a violation of paragraph (1) of subsection (b) of this Code section when such violation is on an area of land or field baited for doves which was not previously identified by a conservation ranger as provided in this subsection prior to such violation. (Ga. L. 1925, p. 302, § 6; Code 1933, § 45-317; Ga. L. 1955, p.

483, § 64; Ga. L. 1968, p. 497, § 18; Code 1933, § 45-508, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1989, p. 469, § 1; Ga. L. 2002, p. 1179, § 5; Ga. L. 2007, p. 47, § 27/SB 103; Ga. L. 2011, p. 249, § 1/HB 277.)

**The 2011 amendment**, effective July 1, 2011, added subsection (a); redesignated former subsection (a) as present subsection (a.1); deleted “; provided, however, that it shall be lawful to hunt deer within the vicinity of such feeds if the hunter is at least 200 yards away from and not within sight of the feed or bait” following “be hunting” at the end of the present subsection (a.1); added subsection (a.2); designated the existing provisions of subsection (b) as paragraph (b)(1); substituted “where any corn, wheat, or other grains, salts, apples, or other feed” for “where any such feed” in the first sentence of paragraph (b)(1); added paragraphs (b)(2) through (b)(4); in subsection (c), inserted “paragraph (1) of” throughout, added “for doves” at the end of the fifth

sentence, substituted “control of the area of land or field baited for doves” for “control of the baited area of land or field” in the sixth sentence, substituted “control of an area or field baited for doves” for “control of a baited area or field” in the seventh sentence, inserted “for doves” following “baited” in the eighth sentence, substituted “subsection (a.1)” for “subsection (a)” near the end of the ninth sentence, and substituted “on an area of land or field baited for doves” for “on a baited area of land or field” in the last sentence.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 181 (2011). For article, “Game and Fish: Wildlife Generally,” see 28 Ga. St. U. L. Rev. 181 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting required for violating paragraph (b)(4).** — Offenses arising from a violation of paragraph (b)(4) of O.C.G.A. § 27-3-9 are offenses for which fingerprinting is required, while these of-

fenses arising from a violation of subsection (c) are not offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

## 27-3-15. Seasons and bag limits; promulgation of rules and regulations by board; possession of more than bag limit; reporting number of deer killed.

(a) It shall be unlawful to hunt the following game species at any time during the periods set forth below:

### Game Species

- (1) Quail
- (2) Grouse
- (3) Turkey
  - (A) Gobblers
  - (B) Hens

### Closed Season

March 16 — Oct. 31
March 1 — Oct. 14
May 22 — March 14
All year

<u>Game Species</u>	<u>Closed Season</u>
(4) Deer	Jan. 16 — Sept. 7; except that the closed season may be Feb. 1 — Sept. 7 in those counties specified as having an extended archery-only open season in paragraph (4) of subsection (b) of this Code section
(5) Bobcat	March 1 — Oct. 14
(6) Opossum	March 1 — Oct. 14, for that area north of and including Haralson, Paulding, Bartow, Cherokee, Forsyth, Hall, Banks, Franklin, and Hart counties
(7) Rabbit	March 1 — Oct. 31
(8) Raccoon	March 1 — Oct. 14, for that area north of and including Carroll, Fulton, Gwinnett, Barrow, Clarke, Oglethorpe, Taliaferro, Wilkes, and Lincoln counties
(9) Squirrel	March 1 — August 14
(10) Bear	Jan. 16 — Sept. 7
(11) Sea turtles and their eggs	All year
(12) Cougar ( <i>Felis concolor</i> )	All year
(13) Alligators	Nov. 1 — March 31
(14) Migratory game birds	March 11 — August 31

(b) It shall be unlawful to hunt the following game species at any time during the period set forth below, except that it shall not be unlawful to hunt the following game species during such periods or portions thereof, and in such number not to exceed the following

numbers, as may be designated by the board as open seasons and bag limits for such species:

<u>Game Species</u>	<u>Maximum Open Season</u>	<u>Maximum Bag Limits</u>	
		<u>Daily</u>	<u>Season</u>
(1) Quail	Nov. 1 — March 15	12	No limit
(2) Grouse	Oct. 15 — Feb. 29	3	No limit
(3) Turkey gobblers	March 15 — May 21	3	3
(4) Deer	Sept. 8 — Jan. 15; except that there may be also an extended archery- only open season Jan. 1 — Jan. 31 in the counties of Clayton, Cobb, DeKalb, Forsyth, Fulton, Gwinnett, and Rockdale due to the extra need for herd reduction in that urban and suburban area of the state	The daily limit shall be ten antlerless deer and two antlered bucks. The season limit shall be ten antlerless deer and two antlered bucks. Only one antlered buck may have less than four points one inch or longer on one side of the antlers.	
(5) Bobcat	Oct. 15 — Feb. 29	Up to two deer per managed hunt may be allowed on wildlife management areas without complying with the state-wide bag limit	No limit
			No limit

<u>Game Species</u>	<u>Maximum Open Season</u>	<u>Maximum Bag Limits</u>	
		<u>Daily</u>	<u>Season</u>
(6) Opossum	(A) Oct. 15 — Feb. 29, for that area north of and including Haralson, Paulding, Bartow, Cherokee, Forsyth, Hall, Banks, Franklin, and Hart counties; and  (B) Jan. 1 — Dec. 31 for the remainder of the state	No limit	No limit
(7) Rabbit	Nov. 1 — Feb. 29	12	No limit
(8) Raccoon	(A) Oct. 15 — Feb. 29, for that area north of and including Carroll, Fulton, Gwinnett, Barrow, Clarke, Oglethorpe, Taliaferro, Wilkes, and Lincoln counties; and  (B) Jan. 1 — Dec. 31 for the remainder of the state	No limit	No limit
(9) Squirrel	Aug. 15 — Feb. 29	12	No limit
(10) Fox	Jan. 1 — Dec. 31	No limit	No limit
(11) Migratory game birds	Sept. 1 — March 10	Subject to limits set by the federal government and adopted by the board	
(12) Bear	Sept. 8 — Jan. 15	2	2

<u>Game Species</u>	<u>Maximum Open Season</u>	<u>Maximum Bag Limits</u>	
		<u>Daily</u>	<u>Season</u>
(13) Alligators	April 1 — Oct. 31	Subject to limits adopted by the board	

(c) In accordance with subsection (b) of this Code section and as may be appropriate, based on sound wildlife management principles, the board is authorized to promulgate rules and regulations establishing open seasons on a state-wide, regional, or local basis and establishing daily and season bag limits.

(d) In accordance with subsection (b) of this Code section and in accordance with the framework of open hunting season dates for migratory game birds established by the United States Fish and Wildlife Service and as may be appropriate based on sound wildlife management principles, the board is authorized to promulgate rules and regulations establishing methods of taking, daily and season bag limits, and open seasons for migratory game birds on a state-wide, regional, or local basis. The board is specifically authorized to promulgate such rules and regulations without complying with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and all rules and regulations promulgated by the board pursuant to this subsection shall be effective immediately upon adoption by the board.

(e) It shall be unlawful for any person to possess more than the daily bag limit or more than the aggregate of the daily bag limits while in the field or while returning from the field to one's automobile or principal means of land transportation or to one's permanent abode or temporary or transient place of lodging or to a commercial storage facility or to a post office or to a common carrier facility.

(f) Notwithstanding the provisions of subsections (a) and (b) of this Code section, it shall be unlawful to take the species designated below, except squirrels, by means of falconry at any time during the period March 16 through September 30; but it shall not be unlawful to take the species designated below, except squirrels, by means of falconry during the period October 1 through March 15. It shall be unlawful to take squirrels by means of falconry at any time during the period March 16 through August 14, but it shall not be unlawful to take squirrels by means of falconry at any time during the period August 15 through March 15 in such number not exceeding the bag limits for each such species as follows:

<u>Game Species</u>	<u>Maximum Bag Limits</u>	
	<u>Daily</u>	<u>Season</u>
(1) Quail	12	No limit

(2) Grouse	3	No limit
(3) Rabbit	12	No limit
(4) Squirrel	12	No limit

(g)(1) The department shall report to the General Assembly on or before the fifth day of February of each year the estimated number of deer killed, by sex, in the immediately preceding season.

(2) Upon completion of its annual analysis of data from the immediately preceding season, the department shall report to the General Assembly on the same day that it reports to the Board of Natural Resources each year the actual number of deer killed, by sex, in the immediately preceding season. (Code 1933, § 45-513, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 46; Ga. L. 1979, p. 394, §§ 1, 2; Ga. L. 1979, p. 678, §§ 26, 27; Ga. L. 1980, p. 95, § 2; Ga. L. 1980, p. 323, § 3; Ga. L. 1981, p. 798, §§ 9-12; Ga. L. 1982, p. 3, § 27; Ga. L. 1982, p. 1263, § 1; Ga. L. 1983, p. 3, § 20; Ga. L. 1987, p. 3, § 27; Ga. L. 1988, p. 323, § 1; Ga. L. 1988, p. 835, § 1; Ga. L. 1988, p. 848, §§ 4, 5; Ga. L. 1989, p. 253, § 2; Ga. L. 1989, p. 1552, § 3; Ga. L. 1992, p. 6, § 27; Ga. L. 1992, p. 2863, § 6; Ga. L. 2000, p. 1472, § 1; Ga. L. 2002, p. 1179, § 6; Ga. L. 2005, p. 1218, §§ 1, 2/HB 292; Ga. L. 2010, p. 952, § 4/SB 474.)

**The 2010 amendment**, effective June 3, 2010, substituted “2” for “1” twice in paragraph (b)(12).

**Law reviews.** — For article, “Game and Fish: Wildlife Generally,” see 28 Ga. St. U. L. Rev. 181 (2011).

### 27-3-19.1. Regulation of the exporting, farming, and selling of fresh-water turtles.

(a) It shall be unlawful to export, farm, or sell any fresh-water turtle or part thereof except in accordance with rules and regulations adopted by the board.

(b) As the board deems appropriate for purposes of this Code section, it may promulgate such rules and regulations as are reasonable and necessary under sound wildlife management practices. (Code 1981, § 27-3-19.1, enacted by Ga. L. 2010, p. 952, § 5/SB 474.)

**Effective date.** — This Code section became effective June 3, 2010.

### OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-19.1 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

**27-3-24. Restrictions on hunting feral hogs.**

(a) It shall be unlawful to hunt, or engage in the hunting of, feral hogs:

(1) Upon the lands of another or enter upon the lands of another in pursuit of feral hogs without first obtaining permission from the landowner or lessee of such land or the lessee of the game rights of such land;

(2) Upon any land which is posted without having the permission required by paragraph (1) of this subsection in writing and carried upon the person;

(3) Reserved;

(4) From within a vehicle or while riding on a vehicle at night and with the use of a light;

(5) At night with a light, except that a light which is carried on the person of a hunter, affixed to a helmet or hat worn by a hunter, or part of a belt system worn by a hunter may be used for locating feral hogs; or

(6) During the firearms deer season unless the hunter and each person accompanying the hunter are wearing a total of at least 500 square inches of daylight fluorescent orange material as an outer garment and such material or garment is worn above the waistline, and may include a head covering.

(a.1)(1) The board may by rule or regulation restrict the feeding, baiting, or hunting of feral hogs upon, over, around, or near feed or bait in any county wherein there is a documented occurrence of a communicable disease in deer and in any county adjoining such county. Such restriction may be imposed in such county and any adjoining county for a period of up to and including one year and may be extended for additional periods of up to and including two years each upon documentation that the communicable disease is still present in deer in such county. No person shall feed, bait, or hunt feral hogs in violation of any restriction imposed pursuant to this paragraph.

(2) The department shall give notice of such restriction by mail or electronic means to each person holding a current license to hunt whose last known address is within a restricted county. The department may place or designate the placement of signs and markers so as to give notice of such restriction.

(a.2) It shall be unlawful for any person to place, expose, deposit, distribute, or scatter any corn, wheat, or other grains, salts, apples, or

other feed or bait so as to constitute a lure, attraction, or enticement for feral hogs within 50 yards of any property ownership boundary.

(b) The Board of Natural Resources is authorized by rules or regulations to control and regulate the hunting or taking of feral hogs on wildlife management areas. (Code 1981, § 27-3-24, enacted by Ga. L. 1984, p. 568, § 3; Ga. L. 2009, p. 48, § 2/SB 111; Ga. L. 2011, p. 249, § 2/HB 277.)

**The 2009 amendment**, effective July 1, 2009, substituted "is carried on the person of a hunter, affixed to a helmet or hat worn by a hunter, or part of a belt system worn by a hunter may be" for "does not exceed six volts or a fuel-type lantern may be carried on the person of a hunter and" in the middle of paragraph (a)(5).

**The 2011 amendment**, effective July 1, 2011, in subsection (a), substituted "Reserved" for the former provisions of paragraph (a)(3), which read: "Upon, over, around, or near any land or place upon which any corn, wheat, or other grains, salts, apples, or other feeds or bait which would constitute a lure, attraction, or enticement for any feral hog has been

placed, exposed, deposited, distributed, or scattered or upon, over, around, or near any such place for a period of ten days following the complete removal of all such feed or bait; provided, however, this paragraph shall not prohibit the use of bait described in this paragraph for the purpose of trapping feral hogs or hunting feral hogs by means other than a firearm or bow and arrow"; and added subsections (a.1) and (a.2).

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 181 (2011). For article, "Game and Fish: Wildlife Generally," see 28 Ga. St. U. L. Rev. 181 (2011).

## 27-3-26. Hunting bears; restrictions; penalties.

(a) It shall be unlawful for any person to:

- (1) Hunt, take, or attempt to take a bear except during the open season for hunting and taking bears or under authority of a permit by the Department of Natural Resources to kill or take a bear;
- (2) Buy, sell, barter, or exchange a bear or bear part; or
- (3) Possess or transport a freshly killed bear or bear part except during the open season for hunting and taking bears and except as provided in Code Section 27-3-28.

(b) Each act constituting a violation of this Code section is a separate offense.

(c) Any person violating the provisions of this Code section is guilty of a misdemeanor of a high and aggravated nature, and, upon conviction, may be punished by a fine of not less than \$500.00 and not to exceed \$5,000.00, or by confinement for a term not to exceed 12 months or both. The court may order that restitution be paid to the department of not less than \$1,500.00 for each bear or bear part which is the subject of a violation of this Code section. Any equipment which is used or intended for use in a violation of this Code section, excluding motor

vehicles, is declared to be contraband and is forfeited to the state. The hunting and fishing privileges of any person convicted of violating the provisions of this Code section shall be suspended for three years. (Code 1981, § 27-3-26, enacted by Ga. L. 1991, p. 1157, § 2; Ga. L. 1992, p. 2391, § 6; Ga. L. 2010, p. 952, § 6/SB 474.)

**The 2010 amendment**, effective June 3, 2010, added "and except as provided in Code Section 27-3-28" at the end of paragraph (a)(3).

**27-3-28. Person may take possession of native wildlife which has been killed by a motor vehicle.**

(a) Except as otherwise provided in this Code section, any person may lawfully possess native wildlife which has been accidentally killed by a motor vehicle. The following exceptions and conditions to this general rule shall apply:

(1) Any person taking possession of a bear accidentally killed by a motor vehicle shall notify the department or a law enforcement officer of the fact and location of the taking of possession and his or her name and address within 48 hours after taking possession of the bear; and

(2) This Code section shall not authorize any person to take possession of any animal of a species designated as a protected species under Article 5 of this chapter or under federal law.

(b) A law enforcement officer receiving a report of a person taking possession of a bear under paragraph (1) of subsection (a) of this Code section shall in turn transmit the reported information to the department within 48 hours after receipt of such information. (Code 1981, § 27-3-28, enacted by Ga. L. 2010, p. 952, § 7/SB 474.)

**Effective date.** — This Code section became effective June 3, 2010.

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-28 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

**PART 2**

**DEER**

**27-3-47. Collision with deer by motor vehicle.**

Reserved. Repealed by Ga. L. 2010, p. 952, § 8, effective June 3, 2010.

**Editor's notes.** — This Code section was based on Ga. L. 1968, p. 497, § 20; Code 1933, § 45-525, enacted by Ga. L. 1977, p. 396, § 1.

## ARTICLE 2

### TRAPPING, TRAPPERS, AND FUR DEALERS

#### 27-3-61. Nonresident commercial trapping license.

##### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes prohibiting, limiting, or regulating fishing or hunting in state by nonresidents, 31 ALR6th 523.

#### 27-3-63. General offenses and penalties.

(a) It shall be unlawful for any person to:

(1) Trap any wildlife upon the right of way of any public road or highway of this state; provided, however, that this paragraph shall not apply to any person licensed as required by Code Section 27-3-60 who traps beaver upon the right of way of any state highway, county road, or municipal street as an authorized agent, employee, or contractor of the state, county, or municipality for the purpose of preventing, reducing, or stopping damage to such highway, road, or street resulting from beaver activity;

(2) Set, place, or bait any trap for the purpose of taking any wildlife upon the land or in the waters adjoining the land of any other person, except during the open trapping season for such wildlife, and then only after obtaining the written consent of the owner of the land, which written consent shall be carried upon the trapper's person while engaged in trapping;

(3) Trap any wildlife without inspecting the traps used for such purpose at least once during each 24 hour period and removing from the traps any wildlife caught therein;

(4) Trap any wildlife by the use of any trap or other device which is not legibly etched, stamped, or tagged by affixing a stamped metal tag showing the owner's permanent trapper's identification number as provided by the department or the owner's name. In the event that a trap or other device etched or stamped with the owner's permanent trapper's identification number or name is being used in the field by another, such trap or device must have attached to it a stamped metal tag with the user's permanent trapper's identification number or name. Any trap or other device found in use in the field which is not etched, stamped, or tagged as required by this paragraph may be confiscated and destroyed by the department through its officers and conservation rangers;

(5) Ship or otherwise remove or cause to be removed from this state any raw or undressed hide, fur, pelt, or skin of any fur-bearing animal without first making a report to the department of the removal on forms to be furnished by the department for such purpose;

(6) Fail to carry a weapon of .22 caliber rimfire while tending traps and to fail to use such weapon to dispatch any fur-bearing animal found in a trap, which animal is to be taken by the person;

(7) Fail to carry a choke stick or similar device while tending traps, which device shall be used for releasing domestic animals;

(8) Set on land any trap with a jaw opening larger than 5 3/4 inches, provided that nothing in this Code section shall be construed to restrict the type of trap which may be used in water;

(9) Sell the fur, hide, or pelt of any domestic dog or cat caught by a trap;

(10) Sell the raw, undressed fur, hide, skin, or pelt of any fur-bearing animal unless the person has a current valid commercial trapping license or fur dealer license; or

(11) Set any body-gripping trap (as opposed to a leg-hold trap) of a size in excess of 9 1/2 inches square except in water or on land within ten feet of water, including swamps, marshes, and tidal areas.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall be punished as for a misdemeanor, subject to a minimum punishment as follows:

(1) For the first offense, the offender shall be fined not less than \$100.00, except that this minimum fine shall not apply to the offender if he is 17 years of age or younger;

(2) For a second offense within a two-year period after the first offense, the offender shall be fined not less than \$300.00; or

(3) For a third offense and for each subsequent offense within a two-year period after the first offense, the offender shall be fined not less than \$750.00. (Code 1933, § 45-603, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1977, p. 1270, § 2; Ga. L. 1979, p. 800, §§ 2, 3; Ga. L. 1982, p. 988, § 1; Ga. L. 1983, p. 3, § 20; Ga. L. 1984, p. 802, § 1; Ga. L. 1992, p. 2863, § 8; Ga. L. 2009, p. 47, § 1/SB 110.)

**The 2009 amendment**, effective July 1, 2009, added the proviso at the end of paragraph (a)(1).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-63 does not appear to be an offense

for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

## ARTICLE 4

### SHOOTING PRESERVES

#### 27-3-114. Laws and regulations applicable to shooting preserves; requirements as to hunting licenses.

Except as otherwise specifically provided, all wildlife laws and regulations shall be in full force and effect on shooting preserves licensed pursuant to this article. Specifically, hunting licenses shall be required of all persons hunting on such preserves; provided, however, that it shall be lawful for any resident or nonresident to hunt pen raised game birds on such a preserve with a shooting preserve hunting license as provided in Code Section 27-2-23; and provided, further, that it shall be lawful for any person to hunt pen raised game birds without a hunting license on a shooting preserve which possesses a valid blanket shooting preserve license as provided in Code Section 27-2-23. (Code 1933, § 45-1005, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1979, p. 420, § 13; Ga. L. 1990, p. 386, § 4; Ga. L. 2002, p. 807, § 5; Ga. L. 2009, p. 787, § 9/HB 326.)

**The 2009 amendment**, effective May 5, 2009, in the second sentence, in the first proviso, inserted “resident or” and deleted

“nonresident” preceding “shooting”, and, preceding the second proviso, inserted “and”.

## ARTICLE 5

### PROTECTION OF ENDANGERED WILDLIFE

#### 27-3-130. Short title.

### RESEARCH REFERENCES

**ALR.** — Construction and application of state endangered species acts, 44 ALR6th 325.

**27-3-131. "Protected species" defined.****RESEARCH REFERENCES**

**ALR.** — Construction and application of state endangered species acts, 44 ALR6th 325.

**27-3-132. Powers and duties of department and board.****RESEARCH REFERENCES**

**ALR.** — Construction and application of state endangered species acts, 44 ALR6th 325.

**27-3-133. Penalty for violation of rules and regulations of board.****RESEARCH REFERENCES**

**ALR.** — Construction and application of state endangered species acts, 44 ALR6th 325.

**ARTICLE 8****FERTILITY CONTROL ON WILDLIFE**

**Effective date.** — This article became effective June 3, 2010.

**27-3-180. Findings and declarations.**

The General Assembly recognizes that the hunting and taking of wildlife pursuant to this title are a valued cultural heritage consistent with the sound scientific principles of wildlife management and play an essential and effective role in the management of wildlife populations. The General Assembly further recognizes that the State of Georgia and its citizens derive substantial economic, recreational, and esthetic benefits from such activities. Therefore, the General Assembly finds and declares that it is in the public interest to ensure public health, safety, welfare, and conservation of the state's wildlife resources by strictly regulating in this state the use of fertility control on any wildlife. (Code 1981, § 27-3-180, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

**27-3-181. Use of fertility control of wildlife.**

(a) As used in this article, the term "fertility control" means any action that results in contraception, contragestation, or sterilization or produces a temporary or permanent state of infertility.

(b) It shall be unlawful to apply any fertility control to any wildlife, except in accordance with a wildlife fertility control permit issued under the provisions of this article and any rules or regulations adopted by the board.

(c) Nothing in this article shall prohibit or apply to the medically necessary treatment of sick or injured wildlife by properly licensed veterinarians. This article shall not limit employees of the department in the performance of their official duties. (Code 1981, § 27-3-181, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

**OPINIONS OF THE ATTORNEY GENERAL**

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-3-181 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

**27-3-182. Permit application for applying fertility control to wildlife.**

(a) Application for a wildlife fertility control permit shall be made on forms obtained from the department.

(b) The department may issue such a permit only if it has determined that the proposed activity is in the best interest of the wildlife resources. In making such a determination, the department may consider the following:

(1) Whether the proposed activity may preclude the use of hunting as the primary management tool;

(2) Whether the drug has been approved by the federal Food and Drug Administration;

(3) Whether there is a need for the information and data or a need to manage the target wildlife population to achieve the objectives sought by the applicant;

(4) Whether the proposed activity would duplicate sound scientific research previously accomplished;

(5) Whether the proposed activity is of reasonably sound design;

(6) Whether the proposed activity poses health or safety risks to humans and wildlife, including, but not limited to, wildlife species that may consume the target wildlife;

- (7) Whether the proposed activity includes all necessary approvals, including, but not limited to, any federal or state agency approvals for specific or extra label use and any agency or institutional endorsement of the application; and
- (8) Whether the applicant or the sponsor has documented that he or she has adequate funds available to implement the proposed activity.
- (c) In the event that a determination has been made to revoke, suspend, deny, or refuse to renew any wildlife fertility control permit issued pursuant to this article, the applicant for such permit may appeal the determination according to the provisions stated in Code Section 27-2-25. (Code 1981, § 27-3-182, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

### **27-3-183. Rules and regulations.**

The board is authorized to promulgate and adopt any rules and regulations, consistent with sound wildlife management practices and not inconsistent with law, as it deems necessary and appropriate to carry out the purposes of this article. (Code 1981, § 27-3-183, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

### **27-3-184. Wildlife fertility control permits; cease and desist orders; possession of wildlife.**

- (a) The department shall have the authority to prescribe the form, contents, and conditions for a wildlife fertility control permit and application as it deems necessary to carry out the purposes of this article.
- (b) The department shall have the authority to issue, revoke, or deny any permit required by this article and pursuant to any rules and regulations adopted pursuant to this article.
- (c) The department may, prior to a hearing and in accordance with Code Section 27-1-37, issue a cease and desist order or other appropriate order to any person who is violating any provision of this article or any regulation, permit, or license issued pursuant to this article.
- (d) The department shall have the authority in accordance with Code Sections 27-1-21 and 27-1-37 to take possession of and dispose of any wildlife if it has reason to believe that fertility control has been administered to such wildlife in violation of this article. (Code 1981, § 27-3-184, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

### **27-3-185. Penalties.**

- (a) Any person who violates any provision of this article shall be guilty of a misdemeanor of a high and aggravated nature and upon

conviction shall be punished by a fine of not less than \$1,500.00 nor more than \$5,000.00, imprisonment for a period not exceeding 12 months, or both such fine and imprisonment.

(b) Any licenses or permits issued under this title to any person convicted of violating any provision of this article shall by operation of law be revoked and shall not be reissued for a period of three years. The department shall notify the person in writing of the revocation. (Code 1981, § 27-3-185, enacted by Ga. L. 2010, p. 952, § 9/SB 474.)

## CHAPTER 4

### FISH

#### Article 1

##### General Provisions

Sec. 27-4-1. Salt-water and fresh-water demarcation line.  
 27-4-5. (For effective date, see note) Methods for taking fish generally.  
 27-4-7. (For effective date, see note) Use of gill nets; seizure of illegal nets.  
 27-4-10. (For effective date, see note) Creel and possession limits; size restrictions.  
 27-4-11.1. Possession of firearms and intoxication on public fishing areas; fishing in closed fishing areas; other restrictions in public fishing areas.  
 27-4-12. (For effective date, see note) Adoption of rules and regulations by board; reporting; legislative overruling of rules and regulations.

#### Article 2

##### Noncommercial Fishing

###### PART 1

###### GENERAL PROVISIONS

27-4-34. (For effective date, see note) Fishing with bow and arrow.  
 27-4-35. (Repealed effective January 1, 2013) Sport shad fishing.

27-4-50.

###### PART 2

###### TROUT FISHING

(For effective date, see note) Manner of fishing; moving of trout.

#### Article 3

##### Commercial Fishing and Fish Dealing Generally

###### PART 1

###### GENERAL PROVISIONS

27-4-71.

(For effective date, see note) Commercial fishing for shad, American eels, catfish, and horseshoe crabs.

27-4-72.

(Repealed effective January 1, 2013) Commercial eel fishing.

###### PART 2

###### FRESH-WATER FISHING

27-4-91.

(For effective date, see note) Lawful devices generally.

###### PART 3

###### SALT-WATER FISHING

27-4-112 through 27-4-115. (Repealed effective January 1, 2013).

27-4-118. (For effective date, see note) Required records.

#### Article 4

##### Seafood

###### PART 1

###### GENERAL PROVISIONS

27-4-130. (Effective January 1, 2013)

Sec.

Authority to close salt waters; notice; regulations prohibiting sale of seafood.

27-4-130.1. (Repealed effective January 1, 2013) Open seasons, creel and possession limits, and minimum size limits for certain finfish species.

27-4-130.2. (Repealed effective January 1, 2013) Taking or possession of Atlantic billfish prohibited; catch and release exception.

27-4-131. (Repealed effective January 1, 2013) Zoning of salt waters.

27-4-132. (For effective date, see note) Fishing for shrimp for non-commercial purposes generally.

27-4-133. (For effective date, see note) Lawful nets; opening and closing waters; identification on boats fishing for shrimp.

27-4-137. (For effective date, see note) Condemnation proceedings.

## PART 2

## CRABS

27-4-150. Taking, possessing, and dealing in crabs and peelers; required records.

27-4-151. Use of crab traps; identification of boats or vessels; closure of salt waters authorized.

## PART 3

## TAKING SHRIMP FOR BAIT

27-4-170. (Repealed effective January 1, 2013) Sport bait shrimping.

27-4-171. (Effective January 1, 2013) Bait shrimping.

27-4-172. (Repealed effective January 1, 2013) Protections for horseshoe crabs; catch limits; exceptions.

## PART 4

## SHELLFISH

27-4-190. (For effective date, see note) Master collecting and picker's permits; hours for taking shellfish; recreational harvesting.

27-4-194. (For effective date, see note) Minimum size of shellfish which may be taken for commercial or noncommercial purposes.

## Article 6

## Aquaculture Development

27-4-253. Aquaculture Development Commission created; membership; bylaws; quorum; reimbursement for expenses; meeting at call of chairman.

27-4-262. Rules and regulations.

## ARTICLE 1

## GENERAL PROVISIONS

**27-4-1. Salt-water and fresh-water demarcation line.**

(a) The line established in this state as the separation point between salt waters and fresh waters for commercial fishing and sport fishing is as follows:

(1) The point at which U.S. Highway 17 crosses the following bodies of water and their tributaries shall be the line of demarcation for them: St. Marys River, Satilla River, South Altamaha River, Champney River, Butler River, Darien River, Little Ogeechee System (except Salt Creek), North Newport River, Medway River, Big Ogeechee River, and the point at which Georgia Highway 25/South

Carolina 170 crosses the Savannah River and its tributaries. All water seaward of these points shall be considered salt water; and

(2) The following streams and their tributaries are designated as salt water for their entire length: Crooked River, Little Satilla River, South Brunswick River, Turtle River, Sapelo River, South Newport River, Salt Creek (Little Ogeechee System), and all other rivers, streams, and tributaries in the six coastal counties which are not enumerated in this subsection.

(b) This Code section shall not apply to fresh-water ponds on the seaward side of the demarcation line. (Code 1933, § 45-811, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1982, p. 1629, § 4; Ga. L. 1984, p. 537, § 4; Ga. L. 1998, p. 783, § 13; Ga. L. 2008, p. 163, § 1/HB 1016.)

**The 2008 amendment**, effective May 6, 2008, in the first sentence of paragraph (a)(1), inserted "the point at which Georgia Highway 25/South Carolina 170 crosses the" and added "and its tributaries" at the end.

#### **27-4-5. (For effective date, see note) Methods for taking fish generally.**

(a) (For effective date, see note) It shall be unlawful to fish for game fish, except American shad, hickory shad, flathead catfish, and channel catfish, by any means other than a pole and line. Except as otherwise provided, it shall be unlawful to take any fish in the fresh waters of this state by any method other than a pole and line, sport trotlines in accordance with Code Section 27-4-32, set hooks, jugs, bow and arrow in accordance with Code Section 27-4-34, spears in accordance with Code Section 27-4-33, seines in accordance with Code Section 27-4-6, by hand in accordance with Code Section 27-4-37, and as authorized in Code Section 27-4-91 with regard to commercial fresh-water fishing.

(b) (For effective date, see note) Notwithstanding subsection (a) of this Code section, dip nets and cast nets may be used to take for bait threadfin shad, blueback herring, gizzard shad, and other nongame fish as authorized by the board; and landing nets may be used to land fish legally caught.

(c) Notwithstanding subsection (a) of this Code section, it shall be lawful to use seines, nets, and chemicals in a pond if all the owners of a pond desire that such be done and if a local conservation ranger is notified at least two hours in advance of the use, provided that it shall not be lawful to use such seines, nets, and chemicals in an oxbow lake. For purposes of this Code section, an "oxbow lake" means a lake formed in an abandoned river channel which has become separated from the main stream by a natural change in the river. (Code 1933, § 45-705, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 49; Ga. L.

1986, p. 169, § 1; Ga. L. 2005, p. 1487, § 1/HB 301; Ga. L. 2012, p. 739, § 3/HB 869.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, deleted “bow nets as provided

in Code Section 27-4-35,” preceding “seines in” in the second sentence of subsection (a); and, in the middle of subsection (b), inserted “for bait” and substituted “gizzard shad, and other nongame fish as authorized by the board” for “and gizzard shad for bait”.

#### **27-4-7. (For effective date, see note) Use of gill nets; seizure of illegal nets.**

(a) Except as otherwise provided by law or rule and regulation, it shall be unlawful for any person to use a gill net in any of the fresh waters or salt waters of this state at any time, provided that it shall be lawful for properly licensed fishermen to use such nets in the taking of shad in accordance with Code Section 27-4-71 and all other laws and rules and regulations applicable to the taking of shad. All nets violative of this Code section found in the fresh waters or salt waters of this state or in the possession of any person on or around fresh water or salt water shall be seized by conservation rangers or other peace officers of this state. Nets so seized shall be confiscated and shall become the property of the department and shall be disposed of as the commissioner shall direct.

(b) Except for shad taken in accordance with Code Section 27-4-71, it shall be unlawful to land in this state any of the species of fish enumerated in Code Section 27-4-10 which were taken by means of a gill net. For purposes of this subsection, “to land” fish means to bring the fish to shore in this state in the boat or vessel utilized in taking the fish by means of a gill net, regardless of the jurisdiction from which the fish were taken. (Ga. L. 1957, p. 93, §§ 1, 2; Code 1933, § 45-712, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 2000, p. 1290, § 1; Ga. L. 2012, p. 739, § 4/HB 869.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, in the first sentence of subsection (a), deleted “and sturgeon” following “shad”, deleted “, subsection (d) of

Code Section 27-4-91,” preceding “and all”, and substituted “shad” for “such fish” at the end; and, in the first sentence of subsection (b), substituted “shad” for “sturgeon”, substituted “Code Section 27-4-71” for “subsection (d) of Code Section 27-4-91”, and substituted “Code Section 27-4-10” for “Code Section 27-4-130.1” near the end.

**27-4-10. (For effective date, see note) Creel and possession limits; size restrictions.**

(a) (For effective date, see note) It shall be unlawful to take in one day or to possess at any one time, except at a commercial storage facility or at one's place of abode, more than the creel and possession limits established by the board for that fish species; provided, however, that it shall be illegal to possess more than a total of 50 individuals of all fresh water species named in this Code section. It shall be unlawful to take from the waters of this state or to possess any fish species larger or smaller or in numbers greater than the limits established by the board in accordance with this Code section. The board shall establish creel and possession limits which shall be no greater than the following limits and shall establish sizes of fish species within the following ranges which may not be taken:

Species	Ranges of Sizes Within Which Fish May Not Be Taken	Maximum Daily Creel	And Possession Limit
(1) Largemouth bass	0 — 24 inches	10	
(2) Smallmouth bass	0 — 18 inches	10	
(3) Shoal bass	0 — 18 inches	10	
(4) Suwannee bass	0 — 18 inches	10	
(5) Spotted bass or Kentucky bass	0 — 18 inches	10	
(6) Redeye bass or Coosa bass	0 — 12 inches	10	
(7) Mountain trout	0 — 24 inches	8	
(8) White bass	0 — 36 inches	15	
(9) Striped bass	0 — 36 inches	15	
(10) Striped white bass hybrids	0 — 36 inches	15	

(11) Any one or combination of the species of bream or sunfish	0 — 10 inches	50
(12) Walleye	0 — 24 inches	15
(13) Sauger	0 — 24 inches	15
(14) Chain pickerel	0 — 24 inches	15
(15) Grass pickerel	0 — 12 inches	15
(16) Redfin pickerel	0 — 12 inches	15
(17) Black crappie	0 — 14 inches	30
(18) White crappie	0 — 14 inches	30
(19) American shad	0 — 30 inches	8
(20) Hickory shad	0 — 24 inches	8
(21) Amberjack	0 — 50 inches	5
(22) Atlantic croaker	0 — 10 inches	25
(23) Atlantic sturgeon	0 — 86 inches	1
(24) Black drum	0 — 36 inches	15
(25) Black sea bass	0 — 15 inches	15
(26) Blue marlin		3
(27) Bluefish	0 — 20 inches	15
(28) Cobia	0 — 40 inches	5
(29) Dolphin	0 — 24 inches	15
(30) Flounder ( <i>Paralichthys</i> spp.)	0 — 15 inches	15
(31) Gag grouper	0 — 25 inches	5
(32) King mackerel	0 — 36 inches	5
(33) Red drum	0 — 36 inches	5
(34) Red porgy	0 — 20 inches	10
(35) Red snapper	0 — 25 inches	5
(36) Sailfish		3
(37) Sand tiger shark	0 — 140 inches	1

(38) Sharks	0 — 120 inches	2
(39) Sheepshead	0 — 20 inches	15
(40) Small sharks composite (Atlantic sharpnose, bonnethead, and spiny dogfish)	0 — 54 inches	4
(41) Spanish mackerel	0 — 20 inches	20
(42) Spot	0 — 10 inches	25
(43) Spotted sea trout	0 — 25 inches	15
(44) Tarpon	0 — 90 inches	1
(45) Tripletail	0 — 25 inches	5
(46) Weakfish	0 — 15 inches	15
(47) White marlin		3

(b) In accordance with sound principles of wildlife research and management, the board shall have the authority to promulgate rules and regulations establishing size limits, open seasons, creel and possession limits, and possession and landing specifications on a state-wide, regional, or local basis in accordance with this Code section. The board is further authorized to designate certain areas as catch and release fishing areas and to promulgate rules and regulations necessary for the management of such areas for catch and release fishing. (Code 1933, § 45-713, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, § 50; Ga. L. 1986, p. 504, § 1; Ga. L. 1988, p. 552, § 1; Ga. L. 1989, p. 1552, § 4; Ga. L. 1990, p. 762, § 1; Ga. L. 1991, p. 94, § 27; Ga. L. 1992, p. 1636, § 2; Ga. L. 1995, p. 543, § 3; Ga. L. 1996, p. 980, § 4; Ga. L. 2012, p. 739, § 5/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, in subsection (a), in the first sentence, inserted "fresh water" near the end and added paragraphs (a)(21) through (a)(47).

## **27-4-11.1. Possession of firearms and intoxication on public fishing areas; fishing in closed fishing areas; other restrictions in public fishing areas.**

(a) It shall be unlawful for any person on any public fishing area owned or operated by the department:

(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season

for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129;

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129; or

(3) To be under the influence of drugs, intoxicating liquors, beers, or wines. The determination of whether any person is under the influence of drugs or intoxicating liquors, beers, or wines may be made in accordance with the provisions of Chapter 3 of this title relating to hunting while under the influence of drugs or alcohol.

(b) It shall be unlawful for any person to fish at any time in any pond or lake on a public fishing area owned or operated by the department which has been posted "closed" by the department for purposes of fisheries management or to take or possess any species or any size of any species or to exceed the creel limit of any species at any time from any pond or lake on a public fishing area which has been posted with a sign which states that that species or size may not be taken or that creel limit exceeded. Creel and size limits posted as permissible must be within the limits set forth in Code Section 27-4-10 and, if applicable, the limits set by the board pursuant to subsection (c) of this Code section.

(c) It shall be unlawful for any person to take in one day or to possess at any one time any number of fish caught from public fishing areas except in compliance with limits set by rule and regulation of the board, which limits shall not be more than the maximum limit for that species set forth in Code Section 27-4-10.

(d) It shall be unlawful for any person to fish or to be present on any public fishing area except in accordance with rules and regulations established by the board for the use of such area. The board shall have the authority to adopt rules and regulations governing methods of fishing; to regulate the operation and use of vessels; to close the area or certain ponds or lakes of the area to vessels; and to regulate other matters that the board deems necessary for the safe operation and sound management of the area.

(e) It shall be unlawful on any public fishing area for any person to drive or otherwise operate a vehicle on any road posted "closed" to vehicular access, to drive around a closed gate or cable blocking a road, or to drive on any road that is not improved in that it is not receiving

maintenance for the purpose of vehicular access. It shall be unlawful for any person to park a vehicle at any place within a public fishing area, including upon the right of way of any county, state, or federal highway which traverses the public fishing area, where signs placed at the direction of the commissioner or his or her designee prohibit parking.

(f) It shall be unlawful for any person to camp anywhere on any public fishing area except in those areas designated by appropriate signs as camping areas.

(g) It shall be unlawful for persons under 14 years of age to enter or remain upon any public fishing area unless such person is under adult supervision. It shall be unlawful for any person to cause or knowingly to permit his or her ward who is under 14 years of age to enter or remain upon any public fishing area unless such child or ward is under adult supervision.

(h) It shall be unlawful for any person who has fished at a public fishing area to refuse to allow department personnel to count, measure, and weigh his or her catch. (Ga. L. 1981, p. 1380, § 1; Ga. L. 1982, p. 1729, § 10; Ga. L. 1989, p. 1552, § 6; Ga. L. 1992, p. 1636, §§ 3-5; Ga. L. 1993, p. 91, § 27; Ga. L. 1996, p. 980, § 6; Ga. L. 2010, p. 963, § 2-15/SB 308.)

**The 2010 amendment**, effective June 4, 2010, inserted “other than a handgun, as such term is defined in Code Section 16-11-125.1,” near the beginning of paragraphs (a)(1) and (a)(2); added “or to possess a handgun during a closed hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section 16-11-129” at the end of paragraph (a)(1); and added “or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person possesses a valid weapons carry license issued pursuant to Code Section

16-11-129” at the end of paragraph (a)(2). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 963, § 3-1, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecutions.

**Law reviews.** — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

## OPINIONS OF THE ATTORNEY GENERAL

**Fingerprinting not required.** — Offense arising from a violation of O.C.G.A. § 27-4-11.1 does not appear to be an of-

fense for which fingerprinting is required. 2010 Op. Att’y Gen. No. 10-6.

**27-4-12. (For effective date, see note) Adoption of rules and regulations by board; reporting; legislative overruling of rules and regulations.**

(a) In accordance with current, sound principles of wildlife research and management, the board shall have the authority to adopt rules and regulations establishing seasons; methods of fishing and disposition; size, possession, and creel limits; and gear and landing specifications for the taking of fish from the fresh waters and salt waters of this state, except to the extent that such matters are specifically provided for by this title.

(b) Within the first ten days of a subsequent legislative session, the board shall report to the appropriate standing committees of each house and to all members whose districts are included within current boundaries of the First Congressional District the following information for the previous year:

(1) A listing and description of rules promulgated by the board for salt-water species listed in Code Section 27-4-10; and

(2) A listing and description of any findings made by the department in making a determination pursuant to Code Section 27-4-130.

(c) The General Assembly may override any rule or regulation promulgated by the board affecting salt-water finfish fisheries after January 1, 2013, by adopting a joint resolution of the General Assembly so stating, the provisions of Code Section 50-13-4 notwithstanding. (Code 1933, § 45-732, enacted by Ga. L. 1977, p. 396, § 1; Code 1933, § 45-733, as redesignated by Ga. L. 1981, p. 1380, § 1; Ga. L. 2012, p. 739, § 6/HB 869.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, designated the existing provisions as subsection(a); in subsection (a), substituted “In accordance with current,

sound principles of wildlife research and management, the” for “The” at the beginning, and substituted “; methods of fishing and disposition; size, possession, and creel limits; and gear and landing specifications” for “, methods of fishing, and possession and creel limits” near the middle; and added subsections (b) and (c).

**ARTICLE 2**  
**NONCOMMERCIAL FISHING**

**PART 1**

**GENERAL PROVISIONS**

**27-4-34. (For effective date, see note) Fishing with bow and arrow.**

(a) It shall be unlawful to take nongame fish from the waters of this state by means of bow and arrow except under the following conditions:

(1) Each person using a bow and arrow shall have on his or her person a valid state resident or nonresident fishing license;

(2) All arrows used pursuant to this Code section must be equipped with barbs or contain devices on the point to act as a harpoon for recovering fish and must be attached to the person or bow by a rope, line, or cord sufficient for recovering the arrow and nongame fish;

(3) Arrows with poisonous or exploding heads are illegal;

(4) It shall be unlawful to discharge arrows into waters nearer than 150 feet to anyone engaged in any other means of recreation; and

(5) Legal hours for the taking of fish by bow and arrow shall be from sunrise to sunset, except as otherwise provided in subsection (d) in this Code section.

(b) Any game fish, except channel catfish and flathead catfish taken under the provisions of subsection (d) of this Code section, with an open wound and in the possession of a person fishing with a bow and arrow shall be *prima-facie* evidence of taking and possessing fish illegally.

(c) Notwithstanding the provisions of paragraph (5) of subsection (a) of this Code section, if all other requirements of said subsection (a) are met, nongame fish may be taken in impounded waters of reservoirs over 500 acres in size by bow and arrow at any time during the day and may be taken at night by the use of a light.

(d) It shall be unlawful to take channel catfish and flathead catfish anywhere in the Savannah River, including its tributaries and impoundments within the Savannah River Basin, by means of bow and arrow, except under the following conditions:

(1) Each person using a bow and arrow shall have on his or her person a valid state resident or nonresident fishing license;

(2) All arrows used pursuant to this subsection must be equipped with barbs or contain devices on the point to act as a harpoon for recovering fish and must be attached to the person or bow by a rope, line, or cord sufficient for recovering the arrow and channel catfish or flathead catfish;

(3) Arrows with poisonous or exploding heads are illegal;

(4) It shall be unlawful to discharge arrows into waters nearer than 150 feet to anyone engaged in any other means of recreation; and

(5) The taking of channel catfish and flathead catfish in the Savannah River, including its tributaries and impoundments within the Savannah River Basin, by bow and arrow shall be legal at any time of the day and at night by the use of a light.

(e) (For effective date, see note) Subject to the provisions of this Code section, and in accordance with current, sound principles of wildlife research and management, the board is authorized to promulgate rules and regulations regarding the taking of any fish from the salt waters of this state by means of bow and arrow. (Code 1933, § 45-709, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1988, p. 366, § 1; Ga. L. 1992, p. 1636, § 6; Ga. L. 2000, p. 1393, § 1; Ga. L. 2012, p. 739, § 7/HB 869.)

**Delayed effective date.** — Subsection (e), as set out above, becomes effective January 1, 2013. Until January 1, 2013, there is no subsection (e).

**The 2012 amendment**, effective January 1, 2013, added subsection (e).

#### **27-4-35. (Repealed effective January 1, 2013) Sport shad fishing.**

Reserved. Repealed by Ga. L. 2012, p. 739, § 8/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 8/HB 869, provides for the repeal of this Code section effective January 1, 2013.

For provisions of this Code section effective until that date, see the bound volume.

## **PART 2**

### **TROUT FISHING**

#### **27-4-50. (For effective date, see note) Manner of fishing; moving of trout.**

(a) (For effective date, see note) It shall be unlawful to fish for trout in any waters designated as trout waters pursuant to Code Section 27-4-51 by any means other than using one pole and line held in hand.

(b) (For effective date, see note) It shall be unlawful to use live fish for bait in any waters designated as trout waters pursuant to Code Section 27-4-51, except as authorized by the board.

(c) It shall be unlawful to move trout from any of the fresh waters of this state to any other fresh waters of this state, except that authorized agents of the department may move trout as necessary for purposes of fisheries management, conservation, and restoration. (Code 1933, § 45-715, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1995, p. 543, § 5; Ga. L. 1998, p. 1550, § 3; Ga. L. 2012, p. 739, § 9/HB 869.)

**Delayed effective date.** — Subsections (a) and (b), as set out above, become effective January 1, 2013. For version of subsections (a) and (b) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective Janu-

ary 1, 2013, substituted “waters designated as trout waters pursuant to Code Section 27-4-51” for “of the fresh waters of this state” in the middle of subsection (a) and added “, except as authorized by the board” at the end of subsection (b).

## ARTICLE 3

### COMMERCIAL FISHING AND FISH DEALING GENERALLY

#### PART 1

##### GENERAL PROVISIONS

**27-4-71. (For effective date, see note) Commercial fishing for shad, American eels, catfish, and horseshoe crabs.**

(a) It shall be unlawful to fish commercially for shad, American eels, catfish in salt water, or horseshoe crabs except with a valid commercial fishing license as prescribed in Code Section 27-2-23 and a valid commercial fishing boat license as prescribed in Code Section 27-2-8. In accordance with current, sound principles of wildlife research and management, the commissioner may authorize any person so licensed to fish for shad, American eels, catfish in salt water, or horseshoe crabs.

(b) In accordance with current, sound principles of wildlife research and management, the board is authorized to promulgate rules and regulations establishing the seasons, days, and places; methods of fishing and disposition; and size, creel, and possession limits for fishing commercially for shad, American eels, catfish in salt water, and horseshoe crabs.

(c) It shall be unlawful to fish commercially for shad, American eels, catfish in salt water, or horseshoe crabs except in compliance with the rules and regulations of the board pertaining to the seasons, days, and places; methods of fishing and disposition; and size, creel, and posses-

sion limits for fishing commercially for such species. (Code 1933, § 45-805, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, §§ 54, 55; Ga. L. 1979, p. 420, § 1; Ga. L. 1979, p. 678, § 31; Ga. L. 2012, p. 739, § 10/HB 869.)

**Delayed effective date.** — This Code section, as set out above, becomes effective January 1, 2013. For version of this Code section in effect until January 1, 2013, see the bound volume.

**The 2012 amendment**, effective January 1, 2013, rewrote subsections (a) through (c) and deleted former subsections (d) through (g).

#### **27-4-72. (Repealed effective January 1, 2013) Commercial eel fishing.**

Reserved. Repealed by Ga. L. 2012, p. 739, § 11/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 11/HB 869, provides for the repeal of this Code section effective January 1,

2013. For provisions of this Code section effective until that date, see the bound volume.

#### **27-4-75. (For effective date, see note) Sale of fish by commercial fish hatcheries; sale of game fish; bill of sale or lading for possession of certain game fish and domestic fish; sale of diseased fish.**

**Delayed effective date.** — Ga. L. 2004, p. 948, § 3-1(c), provides that the 2004 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assem-

bly. This Code section, as amended, is not set out in the bound volume owing to the delayed effective date. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly.

#### **27-4-76. (For effective date, see note) Licensing of wholesale and retail fish dealers; sale, transportation into state, or possession of live fish and fish eggs.**

**Delayed effective date.** — Ga. L. 2004, p. 948, § 3-1(c), provides that the 2004 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assem-

bly. This Code section, as amended, is not set out in the bound volume owing to the delayed effective date. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly.

## PART 2

## FRESH-WATER FISHING

**27-4-91. (For effective date, see note) Lawful devices generally.**

(a) (For effective date, see note) Except as otherwise provided by law or regulation, it shall be unlawful for any person engaged in commercial fresh-water fishing in this state to use any gear other than trotlines, baskets in accordance with Code Section 27-4-92, turtle traps, or shad nets in accordance with Code Section 27-4-71, to which have been attached a tag bearing the name, address, and commercial fishing license number of the person using any such gear.

(b) For purposes of subsection (a) of this Code section, "trotlines" means one line which has more than 50 hooks in any combination or a combination of lines with more than 50 hooks in use by one person. The lines must be marked with visible buoys and must be attended regularly and removed after the completed fishing trip. The lines must be submerged at least three feet below the surface of the water. It shall be unlawful to keep any game fish, except flathead catfish, channel catfish, American shad, and hickory shad, taken with such lines.

(c) For purposes of subsection (a) of this Code section, turtle traps must be constructed of netting and shaped as hoop nets. The traps must also have one open muzzle or throat at least 32 inches wide with a ring ten inches in diameter made into the rear of the trap to permit fish to escape. Notwithstanding any other provision to the contrary, it shall be unlawful to use such traps in the Chattahoochee River and its impoundments lying between Georgia and Alabama. It shall also be unlawful to retain any game fish taken in such traps in any of the waters of this state. (Ga. L. 1931, p. 169, § 5; Code 1933, § 45-505; Ga. L. 1955, p. 483, § 91; Code 1933, § 45-803, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1980, p. 2004, § 5; Ga. L. 1982, p. 1729, § 7; Ga. L. 2012, p. 739, § 12/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. Subsection (d) will be deleted effective January 1, 2013. For version of subsections (a) and (d) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, in the middle of subsection (a), inserted "or" and deleted "and sturgeon nets," preceding "to which have"; and deleted former subsection (d), which read:

"For purposes of subsection (a) of this Code section, 'sturgeon nets' means a single net or webbing of mesh of not less than six inches on the square, provided that such nets must be situated so as to allow one-third of the stream width to remain open and free for the passage of fish. Such nets may not be used except between January 15 and July 1 of each year. It shall be unlawful to retain any game fish taken in such nets."

## PART 3

## SALT-WATER FISHING

**27-4-112 through 27-4-115. (Repealed effective January 1, 2013).**

Reserved. Repealed by Ga. L. 2012, p. 739, §§ 13-16/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, §§ 13-16/HB 869, provide for the repeal of these Code sections effective January 1, 2013. For provisions of these Code sections effective until that date, see the bound volume.

**27-4-118. (For effective date, see note) Required records.**

(a) (For effective date, see note) It shall be unlawful for any person landing seafood in this state to fail to maintain at all times a record book showing the amount of seafood landed per trip; the name and address of the person or persons to whom sold; the date of sale and the time and place of delivery; and such other information as may be required by the department.

(b) Each person required to maintain records pursuant to the provisions of subsection (a) of this Code section shall report such information to the department, whose address for the purpose of reporting shall be the Coastal Resource Division headquarters, at such times and in such manner as the board provides by rule or regulation. (Ga. L. 1925, p. 339, § 2; Ga. L. 1931, p. 7, § 25; Code 1933, § 45-215; Ga. L. 1955, p. 483, § 36; Code 1933, § 45-910, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1991, p. 693, § 3; Ga. L. 1998, p. 1133, § 7; Ga. L. 2007, p. 93, § 7/HB 100; Ga. L. 2012, p. 739, § 17/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, in subsection (a), substituted "It" for "Except for the taking of shellfish,

it" at the beginning, substituted "landing seafood in" for "engaged in commercial fishing or in the taking of seafood in the salt waters of", and substituted "seafood landed per trip" for "fish, prawn, shrimp, and other seafood caught daily" near the middle.

## ARTICLE 4

## SEAFOOD

## PART 1

## GENERAL PROVISIONS

**27-4-130. (Effective January 1, 2013) Authority to close salt waters; notice; regulations prohibiting sale of seafood.**

(a) The commissioner shall have the power to close all or any portion of the salt waters of this state to commercial and noncommercial fishing by species for a period not to exceed six months within a calendar year. Any determination to close the salt waters pursuant to this subsection or to reopen such waters shall be made in accordance with current, sound principles of wildlife research and management.

(b) Nothing in this Code section shall prohibit a person from landing in this state any fish or seafood taken in federal waters pursuant to a valid commercial federal permit.

(c) For the purposes of enforcing this article, the department is authorized to zone the salt waters of this state.

(d) Public notice of the opening or closing of salt waters as provided in this article shall be given by posting a notice of such opening or closing at the courthouse in each coastal county and by such other means as may appear feasible to inform interested persons of the opening or closing. Such notices shall be posted at least 24 hours prior to any enforcement action taken pursuant to this Code section.

(e) In accordance with current, sound principles of wildlife research and management, the board is authorized to promulgate rules and regulations to prohibit the sale of any or all seafood in this state. (Code 1981, § 27-4-130, enacted by Ga. L. 2012, p. 739, § 18/HB 869.)

**Effective date.** — This Code section becomes effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 18/HB 869, effective January 1, 2013, repeals former Code Section 27-4-130, relating to factors governing the decision to

open or close salt waters and public notice thereof, and enacts the present Code section. For provisions of this Code section effective until January 1, 2013, see the bound volume.

**27-4-130.1. (Repealed effective January 1, 2013) Open seasons, creel and possession limits, and minimum size limits for certain finfish species.**

(a) After October 1, 1989, it shall be unlawful to take the following salt-water finfish species at any time during the periods set forth below:

<u>Species</u>	<u>Closed Season</u>
(1) Spanish mackerel	December 1 — March 15
(2) King mackerel	No closed season
(3) Cobia	December 1 — March 15
(4) Red snapper	No closed season
(5) Gag grouper	No closed season
(6) Amberjack	January 1 — March 15
(7) Black sea bass	No closed season
(8) Bluefish	December 1 — March 15
(9) Sheepshead	No closed season
(10) Sailfish	No closed season
(11) Blue marlin	No closed season
(12) White marlin	No closed season
(13) Tarpon	December 1 — March 15
(14) Atlantic sturgeon	July 1 — December 31
(15) Spotted sea trout	No closed season
(16) Red drum	No closed season
(17) Dolphin	No closed season
(18) Sand tiger shark	January 1 — December 31
(19) Small sharks composite (Atlantic sharpnose, bonnethead, and spiny dogfish)	No closed season
(20) Sharks	No closed season
(21) Red porgy	No closed season

(b) The board shall establish open seasons and creel and possession limits within the maximums specified in this subsection and shall establish minimum sizes within the range specified in this subsection; provided, however, that it shall be unlawful to have in one's possession or take from the salt waters of this state any red drum in excess of 23 inches in total length. After October 1, 1989, it shall be unlawful to take the following salt-water finfish species at any time except during the open seasons so established for such species or to take or possess the

following salt-water finfish species except in accordance with the creel and possession limits and minimum sizes so established for such species:

<u>Species</u>	<u>Maximum Open Season</u>	<u>Maximum Daily Creel and Possession Limit</u>	<u>Range of Minimum Sizes</u>
(1) Spanish mackerel	Mar. 16 — Nov. 30	40	10 — 18 inches
(2) King mackerel	All year	15	15 — 35 inches
(3) Cobia	Mar. 16 - Nov. 30	10	20 — 40 inches
(4) Red snapper	All year	20	12 — 20 inches
(5) Gag grouper	All year	20	12 — 36 inches
(6) Amberjack	Mar. 16 — Dec. 31	10	20 — 50 inches
(7) Black sea bass	All year	35	8 — 15 inches
(8) Bluefish	Mar. 16 — Nov. 30	25	12 — 20 inches
(9) Sheepshead	All year	50	8 — 16 inches
(10) Reserved			
(11) Reserved			
(12) Reserved			
(13) Tarpon	Mar. 16 — Nov. 30	5	65 — 90 inches
(14) Atlantic sturgeon	Jan. 1 — June 30	5	24 — 86 inches
(15) Red drum	All year	25	14 inches

(16) Dolphin	All year	15	12 — 24 inches
(17) Sand tiger shark	No open season	1	87 — 140 inches
(18) Small sharks composite (Atlantic sharpnose, bonnethead, and spiny dogfish)	All year	4	30 — 54 inches
(19) Sharks	All year	2	48 — 120 inches
(20) Red porgy	All year	10	12 — 28 inches

(c) It shall be unlawful to take the following salt-water finfish species at any time except during the open seasons so established for such species or to take or possess the following salt-water finfish species except in accordance with the creel and possession limits and minimum sizes so established for such species; provided, however, that trawlers fishing for shrimp for human consumption pursuant to Code Section 27-4-133 shall be exempt from the creel and possession limits for whiting, spot, and Atlantic croaker and provided, further, that hook and line anglers shall be exempt from the creel and possession limits for whiting:

<u>Species</u>		<u>Maximum Open Season</u>	<u>Maximum Daily Creel and Possession Limit</u>	<u>Range of Minimum Sizes</u>
(1) Spotted sea trout	All year	15	13 inches	
(2) Weakfish	All year	1	13 inches	
(3) Black drum	All year	15	10 inches	
(4) Flounder ( <i>Paralichthys</i> <i>spp.</i> )	All year	15	12 inches	

(5) Whiting	All year	35	10 inches
	( <i>Menticirrhus spp.</i> )		
(6) Spot	All year	25	8 inches
(7) Atlantic croaker	All year	25	8 inches
(8) Tripletail	All year	2	18 inches

(d) In accordance with current sound principles of wildlife research and management and the factors thereof set out in subsection (a) of Code Section 27-4-130, the board is authorized to promulgate rules and regulations establishing open seasons, creel and possession limits, minimum size limits, and possession and landing specifications on a state-wide, regional, or local basis as provided in subsections (b) and (g) of this Code section.

(e) In accordance with current sound principles of wildlife research and management and the factors thereof set out in subsection (a) of Code Section 27-4-130, the board is authorized to promulgate rules and regulations to prohibit the sale of any or all of the salt-water finfishes from subsection (b) of this Code section.

(f) Nothing in this Code section shall prohibit those individuals fishing with a valid commercial federal permit in federal waters from exceeding the creel and possession limits, provided that the waters are open for commercial fishing with specified gear and said individual complies with the minimum sizes as set by the board and provided, further, that the commercial quota for the species has not been reached and the board has not prohibited the sale of the species.

(g) All fish subject to minimum size and creel and possession limits pursuant to subsections (b) and (c) of this Code section may be possessed in state waters or landed only with the head and fins intact. It shall be unlawful to transfer at sea in state waters from a fishing vessel to any other vessel or person any fish caught which are subject to the creel and possession limits and minimum size limits pursuant to subsections (b) and (c) of this Code section. (Code 1981, § 27-4-130.1, enacted by Ga. L. 1989, p. 1406, § 1; Ga. L. 1992, p. 1651, § 1; Ga. L. 1994, p. 605, § 1; Ga. L. 1998, p. 570, § 1; Ga. L. 2001, p. 4, § 27; Ga. L. 2001, p. 325, § 1; Ga. L. 2002, p. 809, § 1; Ga. L. 2002, p. 1232, § 3; Ga. L. 2006, p. 219, § 1/HB 1085; Ga. L. 2007, p. 47, § 27/SB 103; Ga. L. 2010, p. 952, § 10/SB 474.)

**Editor's notes.** — Ga. L. 2012, p. 739, § 19/HB 869, provides for the repeal of this Code section effective January 1, 2013. **The 2010 amendment**, effective June 3, 2010, substituted "1" for "6" in paragraph (c)(2).

**27-4-130.2. (Repealed effective January 1, 2013) Taking or possession of Atlantic billfish prohibited; catch and release exception.**

Repealed by Ga. L. 2012, p. 739, § 19/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 19/HB 869, provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume.

**27-4-131. (Repealed effective January 1, 2013) Zoning of salt waters.**

Reserved. Repealed by Ga. L. 2012, p. 739, § 20/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 20/HB 869, provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume.

**27-4-132. (For effective date, see note) Fishing for shrimp for noncommercial purposes generally.**

(a) (For effective date, see note) In accordance with current, sound principles of wildlife research and management, the board is authorized to promulgate rules and regulations establishing the seasons, days, and places; methods of fishing and disposition; and size, creel, and possession limits for noncommercial fishing for shrimp. Except as otherwise provided by law, it shall be unlawful to fish for shrimp for noncommercial purposes in the salt waters of the State of Georgia except by means established by the board. The determination of whether to open or close a river or creek or a portion thereof for fishing for shrimp shall be made by the commissioner in accordance with current, sound principles of wildlife research and management.

(b) Reserved.

(c) It shall be unlawful to fish for shrimp except at such times and places as the commissioner may establish. The commissioner is authorized to open or close any or a portion of the salt waters of this state to fishing for food shrimp at any time between May 15 and the last day of February if the commissioner has determined that such action in opening or closing such waters is in accordance with current sound principles of wildlife research and management. (Code 1933, § 45-902.1, enacted by Ga. L. 1980, p. 2004, § 6; Ga. L. 1998, p. 1133, § 9; Ga. L. 2007, p. 93, § 9/HB 100; Ga. L. 2012, p. 739, § 21/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, in subsection (a), added the first sentence, substituted “established by

the board” for “of a bait shrimp cast net, food shrimp cast net, a beach seine of a length and mesh size authorized for use in salt waters by subsection (d) of Code Section 27-4-112, or a ten-foot net in accordance with Code Section 27-4-170” at the end, and added the last sentence.

**27-4-133. (For effective date, see note) Lawful nets; opening and closing waters; identification on boats fishing for shrimp.**

(a) Except as otherwise specifically provided, it shall be unlawful for any person to use a power-drawn net in any of the salt waters of this state for commercial shrimping for human consumption. All sounds shall be closed to such fishing, except that the commissioner may open Cumberland, St. Simons, Sapelo, St. Andrew, Wassaw, or Ossabaw sounds or any combination of such sounds at any time between September 1 and December 31, provided that he or she has determined that the shrimp in the waters of each sound to be opened are 45 or fewer shrimp with heads on to the pound; and the commissioner shall close each sound so opened when he or she has determined that the shrimp in the waters of the sound exceed 45 shrimp with heads on to the pound. The commissioner may open any waters outside, on the seaward side, of the sounds between May 15 and December 31, provided that he or she has determined that the shrimp in such outside waters are 45 or fewer shrimp with heads on to the pound; and the commissioner shall close the waters so opened when he or she has determined that the shrimp in such outside waters exceed 45 shrimp with heads on to the pound. The commissioner may open any waters outside the sounds during the months of January and February, provided that he or she has determined that the shrimp in such outside waters are 50 or fewer shrimp with heads on to the pound; and the commissioner shall close such outside waters so opened when he or she has determined that the shrimp in such outside waters exceed 50 shrimp with heads on to the pound. The department shall conduct inspections for such shrimp count, and a determination by the commissioner shall be conclusive as to the count. The commissioner shall provide public notice of the opening and closing of such waters, as provided in this Code section, by posting a notice of all openings and closings at the courthouse and on all shrimp docks and by such other means as may appear feasible. The notices shall be posted at least 24 hours prior to any change in the opening and closing of any such waters, provided that such notice is required only when waters are opened or closed by action of the commissioner.

(a.1)(1) It shall be unlawful to fish for shrimp for human consumption with any trawl or trawls having a total foot-rope length greater

than 220 feet, not including the foot-rope length of a single trawl not greater than 16 feet when used as a try net. Foot-rope shall be measured from brail line to brail line, first tie to last tie on the bottom line. The provisions of this subsection shall not apply to vessels having a maximum draft of seven feet or less when fully loaded. The department is authorized to exempt trawls used by persons holding a valid scientific collection permit granted by the department.

(2) A vessel operator who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$500.00 nor more than \$2,500.00 or imprisoned for not longer than 30 days or both, and any trawl on board the vessel shall be contraband and may be seized.

(b) Reserved.

(c) (For effective date, see note) Except as otherwise specifically provided, it shall be unlawful to fish with nets other than cast nets in any of the tidal rivers or creeks, except to fish for shad, provided that nothing contained in this Code section shall be construed so as to prohibit any person from using a beach seine along any public beach.

(d) The department shall have the power to close all or any portion of the salt waters of this state to commercial and recreational fishing in the event of a disaster likely to cause seafood to be unfit for human consumption or in the event of any other emergency situation.

(e) (For effective date, see note) Nothing contained in this Code section shall be construed to prohibit any person from fishing in the salt waters of this state for shrimp to be used or sold for live bait pursuant to Code Section 27-4-171, provided that it shall be unlawful to fish for shrimp for bait with any trawl equipment which has been used to fish for shrimp pursuant to this Code section.

(f) (For effective date, see note) In accordance with current, sound principles of wildlife research and management, the commissioner may authorize any person to fish for crabs, jellyfish, or whelks with power-drawn nets of four-inch stretched mesh from any waters outside, on the seaward side, of the sounds at any time during the year, or from the waters of Cumberland, St. Simons, Sapelo, St. Andrew, Wassaw, and Ossabaw sounds during the months of January, February, and March, when the commissioner has determined that fishing for crabs, jellyfish, or whelks within such waters will not be detrimental to the conservation of crabs, jellyfish, whelks, or shrimp. Possession of any net with mesh smaller than that provided in this subsection while taking crabs, jellyfish, or whelks shall be *prima-facie* evidence of the violation of this Code section.

(g) It shall be unlawful for any person fishing for shrimp for commercial purposes pursuant to this Code section to fail to have positioned

on the bow or cabin of the boat taking such shrimp a board with a background color of daylight fluorescent orange and with such numerals and letters painted or affixed thereon as are specified by the department for the boat. The numerals and letters shall be at least 16 inches in height, black in color, of block character, and spaced so as to be readable from the air from left to right.

(h) Any determination to open or close the salt waters pursuant to this Code section shall be made in accordance with current, sound principles of wildlife research and management. (Ga. L. 1924, p. 101, § 34; Code 1933, § 45-512; Ga. L. 1952, p. 77, §§ 1-4; Ga. L. 1953, Jan.-Feb. Sess., p. 491, §§ 1-7; Ga. L. 1955, p. 483, § 94; Ga. L. 1956, p. 590, §§ 12, 13, 20; Ga. L. 1964, p. 174, § 1; Ga. L. 1966, p. 270, § 1; Ga. L. 1968, p. 202, § 3; Ga. L. 1970, p. 961, §§ 1, 2; Ga. L. 1971, p. 221, § 1; Ga. L. 1974, p. 1170, § 1; Ga. L. 1974, p. 1175, § 1; Code 1933, § 45-902, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 1552, § 3; Ga. L. 1979, p. 678, § 36; Ga. L. 1981, p. 688, § 1; Ga. L. 1982, p. 3, § 27; Ga. L. 1998, p. 1133, § 11; Ga. L. 2001, p. 1069, § 1; Ga. L. 2002, p. 797, § 1; Ga. L. 2007, p. 93, § 11/HB 100; Ga. L. 2012, p. 739, § 22/HB 869.)

**Delayed effective date.** — Subsections (c), (e), and (f), as set out above, become effective January 1, 2013. For version of subsections (c), (e), and (f) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, deleted “or sturgeon” following “shad” in the middle of subsection (c); substituted “Code Section 27-4-171” for “Code Sections 27-4-170 and 27-4-171” in the middle of subsection (e); and, in sub-

section (f), inserted “, jellyfish,” three times, and, in the first sentence, substituted “, the commissioner may” for “, as provided by Code Section 27-4-130, the commissioner is authorized to” at the beginning and inserted “, jellyfish, whelks,” near the end.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, an extra comma was deleted following “management,” in the first sentence of subsection (f).

## **27-4-137. (For effective date, see note) Condemnation proceedings.**

(a) (For effective date, see note) Each boat, propulsion unit, net, door, boom, winch, cable, electronic device, or accessory equipment used in violation of Code Section 27-4-133 or 27-4-171 is declared to be contraband and forfeited to the state and shall be confiscated and seized by any peace officer, who shall impound it in the name of the district attorney whose circuit includes the county in which a seizure is made. The district attorney whose circuit includes the county in which a seizure is made, within 30 days after the seizure of any such equipment, shall institute proceedings by petition in the superior court of any county where the seizure was made against the property so seized and against any and all persons having an interest in or right affected by the seizure or sale of the equipment. A copy of the petition shall be

served upon the owner or lessee of the equipment, if known, and upon the person having custody or possession of the equipment at the time of the confiscation or seizure. If the owner, lessee, or person having custody or possession of the equipment at the time of seizure is unknown, notice of such proceedings shall be published once a week for two consecutive weeks in the newspaper in which sheriff's advertisements of the county are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceedings and any sale of the equipment resulting therefrom. If no defense or intervention shall be filed within 30 days from the filing of the petition, judgment by default shall be entered by the court; otherwise, the case shall proceed as other civil cases. Should it appear upon the trial of the case or upon default that such equipment was used in violation of the Code sections heretofore cited in this subsection, the equipment shall be sold by order of the court after such advertisement as the court may direct. The proceeds arising from the sale shall be applied:

- (1) To the payment of proper costs and expenses, including expenses incurred in the seizure;
- (2) To the payment of the costs of the court and its officers;
- (3) To the payment of any costs incurred in the storage, advertisement, maintenance, or care of such property; and
- (4) If any money remains, to the general funds of the county.

(b) Where the owner or lessee of any equipment seized for purposes of condemnation shall abscond or conceal himself so that actual notice of the condemnation proceedings cannot be served upon him, he shall be served by publication as is provided in subsection (a) of this Code section in the case of an unknown owner or lessee.

(c) All proceedings against any such equipment for the purpose of condemnation shall be proceedings in rem against the equipment, and the equipment shall be described only in general terms. It shall be no ground for defense that the person who had the equipment in possession at the time of its use and seizure has not been convicted or acquitted of any criminal proceedings resulting from or arising out of such use. It is the intent and purpose of the procedure provided by this Code section to provide a civil remedy for the condemnation and sale of equipment used in violation of Code Section 27-4-133, notwithstanding the conviction or acquittal of the person having possession or custody of the equipment at the time of its seizure. The conviction or acquittal of any such person shall not be admissible as evidence in any proceeding under this Code section.

(d) Any party at interest may appear, by answer under oath, and make his defense. The holder of any bona fide lien on the property shall

be protected to the full extent of his lien only if the lien was perfected prior to the filing by the department of the affidavit provided for in paragraph (3) of subsection (a) of Code Section 27-4-134, provided that nothing contained in this Code section shall be construed to obligate the district attorney whose circuit includes the county in which a seizure is made beyond the proceeds of any such sale less the actual costs incurred by him.

(e) The court to which any such petition for condemnation may be referred may, in its discretion, allow any party at interest to give bond and take possession of the equipment seized. The court shall determine whether the bond shall be a forthcoming bond or an eventual condemnation money bond and shall determine the amount of such bond. The enforcement of any bond so given shall be regulated by the general law applicable in such cases.

(f) The court shall have full discretion and authority to permit a settlement between the parties at any stage of the proceedings by permitting to be paid into court the value of the equipment or the value of the equity therein, as determined by the court, which money, when so paid in, shall be distributed as provided by law in all cases of condemnation.

(g) The Attorney General may, upon the request of the commissioner, aid the district attorney in the in rem proceeding arising from any seizure or confiscation of property. (Ga. L. 1953, Jan.-Feb. Sess., p. 491, § 6; Ga. L. 1955, p. 483, § 94; Ga. L. 1970, p. 961, § 1; Ga. L. 1973, p. 795, § 2; Ga. L. 1975, p. 428, § 1; Code 1933, § 45-902, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1982, p. 1729, § 11; Ga. L. 2012, p. 739, § 23/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, deleted “, 27-4-170,” following “Code Section 27-4-133” in the first sentence of subsection (a).

## PART 2

### CRABS

#### **27-4-150. Taking, possessing, and dealing in crabs and peelers; required records.**

(a) It shall be unlawful for any person to take or possess in this state any crab, other than a mature adult female crab, measuring less than five inches from spike to spike across the back; provided, however, that any person may take or possess peelers measuring at least three inches from spike to spike across the back. Any crabs taken or possessed in

violation of this paragraph may not be intentionally killed and must be returned to the salt waters of this state as soon as possible; provided, however, nothing in this paragraph shall prohibit any person from importing, transporting, or possessing crabs when such person can provide documentary evidence showing that the crabs were taken outside this state in full compliance with the laws of the state of origin. He or she must have an executed invoice showing the point of origin of such crabs and exhibit such an invoice upon demand to any conservation ranger.

(b) It shall be unlawful for any person other than a licensed commercial fisherman or licensed commercial crab fisherman to take or possess commercial quantities of crabs, other than soft-shelled crabs, during any 24 hour period; provided, however, nothing in this subsection shall be construed to prohibit a person from possessing commercial quantities of such crabs when the person can provide documentary evidence showing that the crabs were purchased from a licensed commercial fisherman, a licensed commercial crab fisherman, or any person licensed to engage in the business of selling seafood or were purchased outside this state.

(c)(1) It shall be unlawful for any person other than a licensed commercial crab fisherman or a licensed soft-shell crab dealer to take or possess peelers in commercial quantities; provided, however, it shall be lawful for any person to possess such amount of peelers when the person can provide documentary evidence showing that the peelers were purchased from a licensed soft-shell crab dealer or any person licensed to engage in the business of selling seafood or were purchased outside the state.

(2) It shall be unlawful for any person taking peelers to sell the peelers to any person other than a licensed soft-shell crab dealer.

(3) It shall be unlawful for a soft-shell crab dealer to purchase peelers from any person other than a licensed commercial crab fisherman or another soft-shell crab dealer, provided that it shall be lawful for a soft-shell crab dealer to purchase peelers from any person outside this state, or from outside this state.

(d) It shall be unlawful for any person other than a licensed soft-shell crab dealer to operate a shedding facility for commercial purposes.

(e)(1) Except as provided in Code Section 27-4-133, only a person in possession of a valid commercial crabbing license may operate a commercial fishing boat for the purpose of commercial crabbing activities as provided for in subsections (b) and (c) of this Code section. Such license shall be distinct from and in addition to the commercial fishing boat license required by Code Section 27-2-8.

(2) On and after May 1, 2013, the total number of new commercial crabbing licenses issued shall not exceed 100. Those commercial

crabbing licenses issued prior to May 1, 2013, shall remain active until such time the license is not renewed. Any license which is not renewed by May 1 of any license year shall revert to the department for reissue by lottery devised and operated by the department. No person may hold more than one license at any time.

(3) Commercial crabbing licenses may be sold for consideration to any person not holding a current commercial crabbing license unless otherwise prohibited by law or regulation.

(4) Commercial crabbing licenses may be transferred to the licensee's spouse, lineal descendants, siblings, or lineal ancestors if the licensee dies or is permanently and totally disabled. An instrument of the court declaring the rightful heir or recipient may be required for transfers upon a death. For purposes of this Code section, a permanent, total disability shall be a physical or mental impairment of a total and permanent nature which prevents gainful employment and which is certified as such by the United States Department of Veterans Affairs, the Social Security Administration, Medicaid, medicare, the Railroad Retirement System, or a unit of federal, state, or local government recognized by the board by rule or regulation. The transferee of a license so transferred shall engage in commercial crabbing as evidenced by his or her commercial crab harvest records within two years after such transfer or the license shall revert to the department for reissue as provided in paragraph (2) of this subsection. Any person receiving a commercial crabbing license by transfer shall register such transfer with the department and pay to the department the license fee, if so required, within 30 days following the date of the transfer.

(f)(1) It shall be unlawful for anyone engaged in commercial fishing for crabs in the salt waters of this state to fail to maintain at all times a record book showing the amount of crabs caught daily; the name and address of the person or persons to whom sold; the date of sale and the time and place of delivery; and such other information as may be required by the department. If no fishing occurred during any calendar month, a report stating such must be filed.

(2) Each person required to maintain records pursuant to the provisions of paragraph (1) of this subsection shall report such information to the department at such time and in such manner as the board provides by rule or regulation. Such records shall be deemed provided in accordance with the provisions of this subsection on the date they were postmarked with the correct address and postage.

(3) Any person who fails to report records as required by the provisions of paragraph (2) of this subsection within 60 days of the date such report is due shall be penalized as follows:

- (A) On a first offense, the person shall pay a fine of \$250.00;
- (B) On a second offense, the person shall pay a fine of \$500.00; and
- (C) On a third or any subsequent offense, the person shall pay a fine of \$500.00, and his or her commercial crabbing license shall be suspended for a period of ten days.

(4) Any licensed crabber who has not submitted all harvest records for the previous year, as required by paragraph (2) of this subsection and all pertinent rules and regulations, shall be ineligible for license renewal until such time as the required records have been submitted and all penalties paid.

(g) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction, shall pay a fine as follows:

- (1) For a first offense, the person shall pay a fine of \$250.00;
- (2) For a second offense, the person shall pay a fine of \$500.00, and his or her commercial crabbing and commercial fishing boat licenses shall be suspended for ten days and may not be used by any person; and
- (3) For a third and each subsequent offense, the person shall pay a fine of \$1,000.00, and his or her commercial crabbing and commercial fishing boat licenses shall be suspended for 60 days and may not be used by any person. Any person whose license is so suspended shall remove all of his or her traps from the water not later than ten days after the first day of the suspension. (Ga. L. 1939, p. 367, § 1; Ga. L. 1955, p. 483, § 92; Ga. L. 1957, p. 96, § 1; Ga. L. 1976, p. 771, § 1; Code 1933, § 45-901, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1979, p. 893, § 6; Ga. L. 1995, p. 156, § 3; Ga. L. 1997, p. 444, § 1; Ga. L. 1998, p. 1647, §§ 1, 2; Ga. L. 1999, p. 81, § 27; Ga. L. 2002, p. 805, § 1; Ga. L. 2005, p. 594, § 1/SB 119; Ga. L. 2009, p. 8, § 27/SB 46; Ga. L. 2012, p. 775, § 27/HB 942; Ga. L. 2012, p. 958, § 1B/SB 464.)

**The 2009 amendment.** — effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, deleted the paragraph (a)(1) designation in subsection (a).

**The 2012 amendments.** — The first 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted “crabbing licenses” for “crab licenses” in paragraph

(e)(4) and the introductory language of paragraph (e)(5), and substituted “crabbing license” for “crab license” in paragraph (e)(6). The second 2012 amendment, effective July 1, 2012, rewrote subsection (e).

**Editor's notes.** — Former paragraph (a)(2) was repealed on its own terms effective July 1, 2008.

**27-4-151. Use of crab traps; identification of boats or vessels; closure of salt waters authorized.**

(a) For purposes of crabbing, that portion of the St. Marys River and the Satilla River System (including the Satilla River and White Oak Creek) which is seaward of the points at which the Seaboard Coastline Railroad crosses such streams and that portion of the Altamaha River System which is seaward of the points at which U.S. Highway I-95 crosses the streams of that system shall be considered salt water. It shall be unlawful to place any crab trap in the waters of this state other than that described as salt water in Code Section 27-4-1 or by this subsection.

(b) It shall be unlawful to set or place any commercial crab trap in the salt waters of this state which does not have attached a float which is made of a substance visible from a distance of 100 feet in clear weather at slack tide. For the purposes of this Code section, "slack tide" means that portion of the tidal current characterized by slowness, sluggishness, and lack of energy and which occurs approximately midway between maximum flood-tide and maximum ebb-tide currents and between maximum ebb-tide and maximum flood-tide currents.

(c) It shall also be unlawful to set or place in the salt waters of this state any commercial crab trap which does not have attached a float with such identification as is assigned by the department to the owner of the trap. Such identification shall be at least one inch in height, of a color which contrasts with the color of the float, of block character, and spaced so as to be readable from left to right. The identification shall be assigned by the department to the owner of the trap when the owner is issued his or her commercial crabbing license. For subsequent years, the same identification shall be assigned to such commercial crab fisherman.

(d)(1) When the float of a commercial crab trap has been identified as provided in this Code section, it shall be unlawful for any person, other than the licensed commercial crab fisherman or a sole individual licensed as required in subsection (b) of Code Section 27-4-150 and carrying on his or her person written permission from the licensed commercial crab fisherman if the department has been previously notified in writing of such permission, to pull such trap or to take crabs from such trap or intentionally to damage, destroy, remove from the water any crab trap or float thereof, or to use such a float for any purpose. It shall also be unlawful for any person to use such a float for any purpose other than to mark a submerged crab trap. For purposes of determining the number of crab traps a person is employing, it shall be conclusively presumed that a crab trap is tethered to each such float.

(2) In addition to the penalty provided by Code Section 27-1-38, any person convicted of violating the provisions of this subsection shall be penalized as follows:

(A) On a first offense, his or her crabbing license shall be suspended for a period of three months, during which time the person shall be ineligible to apply for a new license and upon the completion of which he or she may renew the license;

(B) On a second offense, his or her crabbing license shall be suspended for a period of six months, during which time the person shall be ineligible to apply for a new license and upon the completion of which he or she may renew the license; and

(C) On a third or any subsequent offense, his or her crabbing license shall be permanently revoked and the person shall be prohibited from purchasing a license in the future.

(e) It shall also be unlawful for any person to engage in commercial crabbing with a boat or vessel unless there is displayed on each side of the forward third of the boat or vessel so as to be readable from the water such identification as is assigned by the department to such person. The identification shall be at least eight inches in height, of a color which contrasts with the color of the background, of block character, and spaced so as to be readable from left to right. The assigned identification of the boat or vessel being utilized shall correspond to the identification of the float of the trap from which crabs are being taken. No boat or vessel shall be assigned more than one identification in any license year unless such boat or vessel is transferred to another licensed commercial fisherman and such transfer is registered with the department. A crabbing boat or vessel may only employ traps marked with floats with identification issued by the department corresponding to the identification of the boat or vessel being utilized. No identification may be assigned to more than one boat or vessel in any license year, except for replacement vessels as provided in subparagraph (g)(1)(B) of this Code section; provided, however, that one identification number may be assigned to a licensed crabber's primary and alternate vessels, only one of which may be operated for crabbing at any time.

(f) It shall be unlawful for any person to catch crabs for commercial purposes within 100 feet of the dock of any other person. It shall also be unlawful to place or set commercial crab traps in the channel of any stream when such channel has been marked by a lawfully established system of waterway markers.

(g)(1)(A) The first time after July 1, 1998, that a person obtains or renews a commercial crabbing license, he or she shall obtain a permit from the department establishing the maximum number of

traps he or she may deploy at any given time during that license year. Such permits shall be issued in 50 trap increments up to a maximum of 200 traps. The licensee shall pay a fee of \$2.00 per trap for the permit, and the permit shall be for the same duration and shall be renewed at the same time as the commercial crabbing license.

(B) No crab trap permit may be sold or transferred to another person except as provided in this subparagraph. Such a permit may be transferred along with the transfer of the licensed commercial crabber's nontrawler license to a replacement vessel if the transfer of the permit and the license is registered with the department. Such a permit may be transferred to the purchaser of a commercial crab boat along with the commercial crabber's license and the commercial crabber's nontrawler license if the transfer of the permit, the commercial crabber's license, and the commercial crabber's nontrawler license are recorded with the department and a new permit fee is paid to the department.

(C) No crab trap permit may be amended to permit the use of more traps except at the time of license renewal. The licensee shall have the trap permit in his or her possession at all times while crabbing.

(2) It shall be unlawful for any licensed commercial crab fisherman or a person designated by such licensee as provided in subsection (d) of this Code section to employ more crab traps than the number allowed by his or her crab trap permit at any time. It shall be unlawful for any person to exercise harvest permission as provided in subsection (d) of this Code section from more than one licensed commercial crab fisherman at any time.

(3) Any person violating the provisions of paragraph (1) or (2) of this subsection shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be punished by a fine of not more than \$2,000.00 or incarceration for not longer than one year or both. In addition to such criminal penalty, any person found guilty of employing more than the permitted number of crab traps shall pay a civil fine of \$100.00 for each excess trap. In addition to such criminal and civil penalties, the license of any person found guilty of employing more than 50 excess crab traps shall be suspended for one year, during which time the person shall be ineligible to apply for a new license and upon the completion of which he or she may renew the license. Upon a second or subsequent such offense, the person's license shall be revoked for one year, and at the end of that time such person must apply for a new license as if he or she had never before been in possession of a license; provided, however, that such individual shall not be eligible to receive a license through

transfer pursuant to paragraph (3) or (4) of subsection (e) of Code Section 27-4-150.

(4) Whenever the commissioner or his or her designee has reason to believe that any person has violated the provisions of paragraph (1) or (2) of this subsection or any rule or regulation promulgated to implement such subsection, he or she may request and shall receive a hearing before an administrative law judge of the Office of State Administrative Hearings acting in place of the Board of Natural Resources, as provided by Code Section 50-13-41. Upon finding that such person has violated this Code section, the administrative law judge shall impose a civil penalty in the amount of \$100.00 for each trap in excess of the permitted number. The decision of the administrative law judge shall constitute a final decision in the matter, and any party to the hearing, including the commissioner, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(h) Any commercial crab trap in violation of this Code section is declared to be contraband and subject to seizure by conservation rangers, sheriffs, and other peace officers authorized to enforce this title.

(i) Nothing in this title shall be construed to require any individual to obtain a commercial fishing license or a commercial crabbing license when such person is deploying six or fewer crab traps in the salt waters of this state to take crabs for personal consumption; provided, however, that each crab trap measures 2 feet by 2 feet or smaller; a float clearly marked with the owner's name and address is attached to each crab trap; the quantity of crabs taken or possessed by such person does not exceed one bushel per person or two bushels per boat when the boat is occupied by more than one person; and the crabs are not sold.

(j) The commissioner shall have the power to close all or any portion of the salt waters of this state to commercial and recreational fishing for blue crabs or any component of the blue crab fishery, including peeler, soft, or sponge crabs. Any determination to close the salt waters pursuant to this subsection or to reopen such waters shall be made in accordance with current, sound principles of wildlife research and management as provided by Code Section 27-4-130. (Ga. L. 1956, p. 590, § 10; Code 1933, § 45-909, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1979, p. 893, § 7; Ga. L. 1982, p. 1629, § 5; Ga. L. 1982, p. 1729, § 7; Ga. L. 1995, p. 156, §§ 4, 5; Ga. L. 1997, p. 444, §§ 2, 3; Ga. L. 1998, p. 1647, § 3; Ga. L. 1999, p. 785, § 1; Ga. L. 2000, p. 136, § 27; Ga. L. 2002, p. 805, § 2; Ga. L. 2008, p. 163, § 2/HB 1016; Ga. L. 2012, p. 958, § 2/SB 464.)

**The 2008 amendment**, effective May 6, 2008, in subsection (j), substituted “salt waters” for “saltwaters” twice and deleted “, in the event of flood, drought, disease, or any other emergency situation or in the event of a disaster or other occurrence likely to cause seafood to be unfit for human consumption” following “sponge crabs” at the end of the first sentence.

**The 2012 amendment**, effective July 1, 2012, in subsection (d), designated the existing provisions as paragraph (d)(1), and added paragraph (d)(2); and substituted “paragraph (3) or (4)” for “paragraph (5)” near the end of paragraph (g)(3).

### PART 3

#### TAKING SHRIMP FOR BAIT

### 27-4-170. (Repealed effective January 1, 2013) Sport bait shrimping.

Reserved. Repealed by Ga. L. 2012, p. 739, § 24/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 24/HB 869, provides for the repeal of this Code section effective January 1, 2013. For provisions of this Code section effective until that date, see the bound volume.

### 27-4-171. (Effective January 1, 2013) Bait shrimping.

(a)(1) It shall be unlawful for any person to fish for shrimp for live bait to be sold, to engage in the sale of shrimp for live bait, or to engage in the sale of shrimp for dead bait unless the person has a bait dealer license and possesses a valid personal commercial fishing license as provided in Code Section 27-2-23 or is an employee of a licensed bait dealer and possesses a valid personal commercial fishing license as provided in Code Section 27-2-23; provided, however, that no cashier employed by a licensed bait dealer and not actively involved in the harvest of bait shrimp shall be required to obtain a commercial fishing license under this Code section. No bait dealer license shall be issued to a person holding a commercial food shrimp cast netting license issued pursuant to Part 5 of this article. Any license issued pursuant to this Code section shall be invalid immediately upon the holder's obtaining such a commercial food shrimp cast netting license. No bait dealer license shall be issued for an individual whose establishment is located on any dock or other facility, including platforms, walkways, and buildings, which is one contiguous unit and where shrimp taken pursuant to Code Section 27-4-133 are processed, stored, or sold for retail purposes.

(2) In addition to complying with subsection (b) of this Code section, any applicant for a bait dealer license must first file with the commissioner a forfeiture bond in the form prescribed by the depart-

ment, executed by a bonding, surety, or insurance company licensed to do business in this state, in favor of the state in the amount of \$2,000.00, conditioned upon the faithful compliance by the person and all his or her employees with all the laws and regulations relating to the taking, possession, and sale of bait shrimp, provided that a cash forfeiture bond in like amount may be substituted in lieu of the commercial bond provided for in this Code section. The term of the bond shall be one year and shall correspond to the period of the bait dealer license, which shall be from April 1 to March 31. The bond shall be in addition to the commercial fishing boat license, where applicable, required by Code Section 27-2-8 and in addition to the personal commercial fishing license required by this Code section. Notation of execution of the bond shall be stamped or endorsed on the applicant's bait dealer license.

(3) Trawler licenses for bait shrimp trawling shall not be issued to any person who does not possess a valid bait dealer license unless such person is an employee of a licensed bait dealer.

(4) In addition to the general provisions of this Code section and in accordance with current, sound principles of wildlife research and management, the board is authorized to promulgate rules and regulations establishing the seasons, days, and places; methods of fishing and disposition; and size, creel, and possession limits for commercial bait shrimping.

(5) It shall be unlawful for any person fishing for shrimp for live bait pursuant to this Code section to:

(A) Hold a valid commercial food shrimp cast netting license issued pursuant to Part 5 of this article or to employ any person holding such a commercial food shrimp cast netting license;

(B) Fish for shrimp pursuant to this Code section in closed waters. All salt waters of this state shall be closed to fishing for shrimp pursuant to this Code section, except those rivers or creeks or portions thereof opened to such taking. The determination of whether to open or close a river or creek or portion thereof shall be made by the commissioner in accordance with current, sound principles of wildlife research and management; and

(C) Fail to maintain on the commercial fishing boat bait-holding facilities which comply with the requirements set forth by the board.

(b) It shall be unlawful for any person to sell or otherwise dispose of, for human consumption, any shrimp caught pursuant to this Code section or to possess such shrimp for the purpose of sale or other distribution for human consumption or personally to consume such

shrimp. Possession of shrimp with heads off shall be prima-facie evidence that the shrimp are to be sold for human consumption or are personally to be consumed. Possession of more than 20 quarts of unlabeled, unpackaged, or unfrozen heads-on shrimp shall be prima-facie evidence that such shrimp are to be used for human consumption or are personally to be consumed.

(c) This Code section shall not prohibit the interstate import of bait shrimp provided that a bona fide bill of lading accompanies such shrimp as proof that such shrimp were not taken or transported in violation of this Code section or the laws of the jurisdiction from which the bait shrimp originated.

(d) It shall be unlawful for any person fishing for shrimp pursuant to this Code section to fail to have positioned on the bow or cabin of the boat being used for fishing for shrimp a board with a background color of daylight fluorescent orange with such numerals and letters painted or affixed thereon as are specified by the department for a particular established bait dealership. The numerals and letters shall be at least 16 inches in height and two inches in width or thickness, black in color, of block character, clearly legible, and spaced so as to be readable from the air from left to right. The numerals and letters required for compliance with this subsection shall be assigned by the department at the time a bait dealer license is issued pursuant to Code Section 27-2-23.

(e) The department shall inspect the bait dealer facilities within 30 days from the time application for license is received to ensure the facilities comply with the requirements of this Code section and Code Section 48-8-59 before issuing a bait dealer license. (Code 1981, § 27-4-171, enacted by Ga. L. 2012, p. 739, § 25/HB 869.)

**Effective date.** — This Code section becomes effective January 1, 2013.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, an engrossing error in the Code section designation was corrected.

**Editor's notes.** — Ga. L. 2012, p. 739, § 25/HB 869, provides for the repeal of this Code section, concerning bait dealers, effective January 1, 2013. For provisions of this Code section effective until January 1, 2013, see the bound volume.

## **27-4-172. (Repealed effective January 1, 2013) Protections for horseshoe crabs; catch limits; exceptions.**

Reserved. Repealed by Ga. L. 2012, p. 739, § 26/HB 869, effective January 1, 2013.

**Editor's notes.** — Ga. L. 2012, p. 739, § 26/HB 869, provides for the repeal of this Code section effective January 1,

2013. For provisions of this Code section effective until that date, see the bound volume.

## PART 4

## SHELLFISH

**27-4-190. (For effective date, see note) Master collecting and picker's permits; hours for taking shellfish; recreational harvesting.**

(a)(1) (For effective date, see note) It shall be unlawful to take or possess shellfish in commercial quantities or for commercial purposes without first having obtained a master collecting permit or without proof of purchase that such shellfish were purchased from a certified shellfish dealer. Master collecting permits shall specify whether the permittee is authorized to take oysters, clams, or other shellfish and shall only be issued to persons certified by the Department of Agriculture to handle shellfish unless permission to take and possess shellfish for mariculture purposes has been granted by the department as described in subsection (d) of Code Section 27-4-197. Such permits shall be provided annually at no cost by the department but shall only be issued to persons with the right to harvest shellfish pursuant to Code Sections 44-8-6 through 44-8-8 or to holders of leases from such persons. A permittee may request authorization from the department for employees or agents, who shall be referred to as pickers, of such permittee to take shellfish from permitted areas. Such request shall be in writing to the department and shall include the name, address, and personal commercial fishing license number of the picker. It shall be unlawful for pickers to take or possess shellfish as authorized under their employer's master collecting permit unless they carry on their person while taking or in possession of shellfish a picker's permit as provided by the department indicating the exact area and circumstances allowed for taking. Such pickers' permits and charts shall be provided annually by the department at no cost and shall be in a form as prescribed by the department. Pickers must possess a valid personal commercial fishing license as provided for in Code Section 27-4-110 and, when a boat is used, a valid commercial fishing boat license as provided in Code Section 27-2-8. Master collecting permits and pickers' permits shall not be issued to persons who have been convicted three times in the two years immediately preceding the filing of an application for a permit of violations of this Code section, subsection (b) of Code Section 27-4-193, subsections (a) and (b) of Code Section 27-4-195, or Code Section 27-4-199. Master collecting permits and pickers' permits issued to master collecting permittees' agents shall be surrendered to the department upon termination of Department of Agriculture certification for handling shellfish, upon termination of right to harvest shellfish, or upon violation of any provision of this title. If a

picker is removed from authorization to take shellfish by the master collecting permittee, that picker shall immediately surrender to the department his picker's permit. It shall be unlawful to possess unauthorized pickers' permits or pickers' permits issued to another person.

(2) (For effective date, see note) All commercially licensed vessels engaged in commercial shellfish harvest or transport, whether with shellfish on board or not, shall have a portable marine toilet on board, as the term is defined in Code Section 52-7-3.

(b) It shall be unlawful for any person to take or possess shellfish from unauthorized locations and during unauthorized periods of taking. It shall be unlawful to take shellfish except between the hours of one-half hour before sunrise and one-half hour after sunset.

(c) A master collecting permit shall not be issued if the permittee has failed to comply with Code Section 27-4-196 during the previous harvest season or if the issuance is determined not to be in accordance with sound, current principles of wildlife research and management by the department. Permits may be revoked according to Code Section 27-2-25.

(d) It shall be unlawful to take any quantity of shellfish for commercial purposes from public recreational harvest areas. Recreational quantities of oysters in the shell shall be two bushels per person with up to six bushels per boat per day. Recreational quantities of clams in the shell shall be one bushel or less per person with no more than one bushel per boat per day. Recreational quantities of shucked oysters or clams or a combination thereof shall be one gallon per day. It shall be unlawful to harvest shellfish recreationally except in areas designated by the commissioner except that private property owners or persons authorized by private property owners may harvest recreational quantities of shellfish from areas for which they have harvest rights to shellfish if they have in their possession proof of ownership or a letter of permission from the property owner stating the dates allowed to take shellfish, type of shellfish which may be taken, and a description of the area allowed for such taking. Private property owners wishing to harvest recreational quantities of shellfish or to issue permission to others to harvest recreational quantities of shellfish shall notify the department in writing prior to the taking of shellfish or the permitting of others to take shellfish so harvest areas can be opened according to Code Section 27-4-195. Permission to harvest shellfish recreationally in public recreational harvest areas shall be granted to all residents and nonresidents upon the designation of individual public recreational harvest areas. (Code 1981, § 27-4-190, enacted by Ga. L. 1991, p. 693, § 6; Ga. L. 2012, p. 739, § 27/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective January 1, 2013, designated the existing provisions of subsection (a) as paragraph (a)(1) and added paragraph (a)(2).

**27-4-194. (For effective date, see note) Minimum size of shellfish which may be taken for commercial or noncommercial purposes.**

(a)(1) (For effective date, see note) It shall be unlawful to take any oysters for noncommercial purposes when the shells of the oysters measure less than three inches from hinge to mouth, except that oysters less than three inches from hinge to mouth may be removed if attached to an oyster of that minimum size and the oyster so attached cannot be removed without destroying the three-inch oyster.

(2) (For effective date, see note) It shall be unlawful to take any oysters for commercial purposes when the shells of the oysters measure less than two inches from hinge to mouth, except that oysters less than two inches from hinge to mouth may be removed if attached to an oyster of that minimum size and the oyster to which it is so attached cannot be removed without destroying the two-inch oyster.

(3) (For effective date, see note) It shall be unlawful for any person engaged in shucking or canning oysters for market to shuck, can, purchase, or have in possession any quantity of oysters containing more than 5 percent of oysters of prohibited size as defined in this Code section. Smaller oysters may be taken incidentally with such minimum-size oysters when they are directly attached to the minimum-size oysters. Oysters of prohibited size as defined in this Code section may be taken or possessed if prior written approval has been obtained from the department and such approval is on the person of the harvester or person in possession of the oyster.

(b) It shall be unlawful to take or possess any clam for commercial or recreational purposes when the maximum depth of the shell of the clam measures less than three-fourths' inch thickness from one shell half to the other unless prior written approval has been obtained from the department and such approval is on the person of the harvester or person in possession of the clam. (Code 1981, § 27-4-194, enacted by Ga. L. 1991, p. 693, § 6; Ga. L. 2001, p. 999, § 1; Ga. L. 2012, p. 739, § 28/HB 869.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection

(a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2012 amendment**, effective Janu-

ary 1, 2013, designated the existing provisions of subsection (a) as paragraphs (a)(1) and (a)(3), added paragraph (a)(2),

and deleted "also" preceding "be unlawful" in the first sentence of paragraph (a)(3).

## ARTICLE 6

### AQUACULTURE DEVELOPMENT

#### 27-4-252. (For effective date, see note) Definitions.

**Delayed effective date.** — Ga. L. 2004, p. 948, § 3-1(c), provides that the 2004 amendment becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assem-

bly. This Code section, as amended, is not set out in the bound volume owing to the delayed effective date. Funds were not appropriated at the 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, or 2012 sessions of the General Assembly.

#### 27-4-253. Aquaculture Development Commission created; membership; bylaws; quorum; reimbursement for expenses; meeting at call of chairman.

(a) There is created the Aquaculture Development Commission. The commission shall be composed of 14 members as follows:

- (1) The president of the Georgia Aquaculture Association or his representative, who shall serve as chairman of the commission;
- (2) The president of the Georgia Farm Bureau Federation or his representative;
- (3) The dean of the College of Agricultural and Environmental Sciences of the University of Georgia or his representative;
- (4) The chairman of the Committee on Agriculture and Consumer Affairs of the House of Representatives or his representative;
- (5) The chairman of the Senate Agriculture and Consumer Affairs Committee or his representative;
- (6) The Commissioner of Agriculture or his representative;
- (7) The commissioner of natural resources or his representative;
- (8) The commissioner of economic development or his or her representative; and
- (9) Six members to be appointed by the president of the Georgia Aquaculture Association as follows:
  - (A) Four members shall be representatives of the aquaculture industry;
  - (B) One member shall be a representative of the commercial fish farming supply and equipment industry; and

(C) One member shall be a representative of a private industry which is doing research in the promotion of fish farming.

Each of such six members shall be appointed for a term of two years and until a successor is appointed and assumes membership on the commission. The terms of the first six such members shall begin on July 1, 1989.

(b) The members of the commission shall enter upon their duties without further act or formality. The commission may make such bylaws for its government as it deems necessary but is under no duty to do so. The commission may appoint working subcommittees based on identified needs. These subcommittees may consist of noncommission members who exhibit an interest in the development of the aquaculture industry of Georgia.

(c) Eight members of the commission shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted the commission by this article. No vacancy on the commission shall impair the right of a quorum to transact any and all business of the commission.

(d) The members shall not receive compensation for their services on the commission but those members who are public officials or employees shall be reimbursed from the funds of their employing department, agency, or branch of government for per diem, travel, and other expenses in the same manner and amount as they otherwise receive for performing services for their respective departments, agencies, or branches of government.

(e) The commission shall meet upon the call of its chairman. (Code 1981, § 27-4-253, enacted by Ga. L. 1992, p. 1507, § 8; Ga. L. 1995, p. 10, § 27; Ga. L. 1995, p. 1059, § 1; Ga. L. 2004, p. 690, § 13; Ga. L. 2009, p. 303, § 1/HB 117.)

**The 2009 amendment**, effective April 30, 2009, substituted “Senate Agriculture and Consumer Affairs Committee” for “Senate Committee on Agriculture of the Senate” in paragraph (a)(5). See editor’s note for intent.

**Editor’s notes.** — Ga. L. 2009, p. 303, § 20, not codified by the General Assem-

bly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

## 27-4-262. Rules and regulations.

The board shall make and publish in print or electronically such rules and regulations, not inconsistent with law, as it deems necessary to

carry out the purposes of this article. (Code 1981, § 27-4-262, enacted by Ga. L. 1992, p. 1507, § 8; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” near the beginning of this Code section.

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## CHAPTER 5

### WILD ANIMALS

Sec.	Sec.
27-5-4. Wild animal licenses and permits generally.	27-5-5. Wild animals for which license or permit required.

#### **27-5-4. Wild animal licenses and permits generally.**

(a) Unless otherwise provided in Code Section 27-5-5, it shall be unlawful for any person to import, transport, transfer, sell, purchase, or possess any wild animal listed in Code Section 27-5-5 or specified by the board by regulation without first obtaining a wild animal license from the department as provided in Code Section 27-2-23 or a wild animal permit as provided in this Code section; provided, however, anyone holding a deer-farming license is not required to have a wild animal license or permit to possess farmed deer. Unless otherwise specified by the department, such license or permit shall be effective from April 1 through March 31 and may contain such conditions and restrictions, including restrictions as to numbers and species of animals, as the department determines appropriate in light of the provisions of this chapter. An applicant for a wild animal license or permit shall have the burden of proving that any wild animals subject to such license or permit are or will be imported, transported, transferred, sold, purchased, or possessed in compliance with this chapter.

(b)(1) Except as provided in paragraph (2) of this subsection, wild animal licenses will be issued only to persons engaged in the wholesale or retail wild animal business or persons exhibiting wild animals to the public. Wild animal permits will be issued at no cost and only to persons for scientific or educational purposes, to persons with a permanent disability or disease as provided and for the purpose described in paragraph (2) of this subsection, or to a pond owner for grass carp or grass carp hybrids where the department has determined that the possession of such carp by the pond owner will not constitute a threat to wildlife; provided, however, that no such permit shall be required for persons buying triploid grass carp from properly licensed wild animal dealers authorized to sell grass carp where the bill of sale is retained by the buyer as proof of such sale and

where the triploid grass carp are to be stocked only into a private pond; provided, further, that no such license or permit shall be required solely for the transportation of wild animals through this state where the animals remain in this state no more than 24 hours and are not sold or transferred while in this state.

(2) The department shall issue a wild animal permit only for an animal in the genus *Cebus* (capuchin monkeys) to any person who establishes to the satisfaction of the department that:

(A) Such person has a permanent disability or disease which interferes with the person's ability to perform one or more routine daily living activities;

(B) The animal for which the permit is to be issued has been trained to assist the person in performing his or her daily living activities;

(C) The animal will be humanely treated and will not present a health or safety threat;

(D) The animal for which the permit is to be issued is the only wild animal to be possessed by that person;

(E) The permittee does not have a history of violating this chapter; and

(F) The organization furnishing the animal to the applicant:

(i) Is reputable, lawful, and does not have any history of violating this chapter;

(ii) Provides to the department documentation and data sufficient to establish that the organization has a proven record, over at least a ten-year period, of furnishing animals which provide meaningful assistance to persons with disabilities; and

(iii) Has received and maintained a nonprofit, tax-exempt status.

(3) Permits issued under the provisions of paragraph (2) of this subsection shall be issued only to individuals and are nontransferable.

(4) Capuchin monkeys possessed under the provisions of paragraph (2) of this subsection are exempt from the requirements of paragraph (5) of subsection (k) of this Code section but must be treated humanely and shall be kept only in the residence of the permittee. When transported, the monkey must be in a USDA approved carrier and there shall be no contact allowed between the public and monkey when outside the permittee's residence. Under no

circumstances may the monkey be present on premises where food is sold.

(c) It shall be unlawful for any person to sell, transfer, deliver, or surrender a wild animal listed in Code Section 27-5-5 or specified by the board by regulation to any other person unless that other person holds a license or permit issued pursuant to this chapter for such wild animal or is exempt from the requirement for such a permit or license by the provisions of subsection (d) of this Code section.

(d) No wild animal license or permit shall be required for a carrier regulated either by the Interstate Commerce Commission, the Civil Aeronautics Board, or the Department of Public Safety to import or transport any wild animal.

(e) Any licenses issued by the department to any person for public exhibition purposes shall be conditioned so that the person operating a wild animal exhibition in a nontraveling, fixed facility shall make the facility open to the public for a time no less than 30 hours per week for at least six months each year; and the person operating a wild animal exhibition in a transient facility shall make the facility open to the public for a reasonable period of time and for reasonable hours of the day, depending upon the nature of the exhibition. The department is authorized to issue such licenses in accordance with this chapter requiring adequate facilities for the humane handling, care, and confinement of wild animals and ensuring public safety. Notwithstanding any other provision of this title, exhibitions of wild animals by federal, state, city, county, or municipal governments or their agencies and transient circuses, which circuses can demonstrate to the satisfaction of the department that 10 percent of the proceeds from such exhibitions shall be devoted to charitable purposes in this state, shall not be required to purchase a wild animal license but shall be required to obtain the license, at no charge, from the department; provided, however, all other provisions of this chapter and all regulations relating to the humane handling, care, and confinement of wild animals must be complied with.

(f) Except as otherwise provided in this chapter, a wild animal license or permit is required for the possession of any wild animal listed in subsection (b) of Code Section 27-5-5 or as required by regulation of the board. Liability insurance is required for the possession of any wild animal that is classified as being inherently dangerous to people in subsection (a) of Code Section 27-5-5 or as required by regulation of the board. Prior to the issuance of a wild animal license or permit for animals classified as being inherently dangerous to people, any applicant other than a governmental agency or university research facility must provide proof of liability insurance from a company licensed to do business in this state or an unauthorized insurer if permitted by

Chapter 5 of Title 33. Such insurance must be maintained in force and effect and cover claims for injury or damage to persons or property in an amount equal to \$40,000.00 for each inherently dangerous animal up to a maximum of \$500,000.00. The insurance company shall notify the department at least 30 days prior to the termination of the policy by the company. Liability insurance is not required for wild animals that are not considered to be inherently dangerous to people.

(g) Any license or permit issued in accordance with this chapter shall be valid only for the species and numbers of wild animals referenced on the application and the license or permit. The license or permit to hold a female wild animal shall cover her progeny only while the progeny are physically dependent upon her or until her progeny are two months of age, whichever period is longer. It shall also be unlawful to transfer any license or permit issued by the department from one person to another person.

(h) It shall be unlawful for any person holding a license or permit issued pursuant to this chapter to import, transport, sell, transfer, or possess any wild animal in facilities not approved by the department as described in Code Section 27-5-6.

(i) In the event that a determination has been made to revoke, suspend, deny, or refuse to renew any license or permit issued pursuant to this chapter, the applicant for the license or permit may appeal the determination according to the provisions stated in Code Section 27-2-25.

(j) It shall be unlawful for any person holding a license or permit pursuant to this chapter to import, purchase, transport, sell, or transfer any wild animal and fail to record in a record book, within 24 hours after the completion of such a transaction, the date, place, manner, and names and addresses of all persons involved in such a transaction. It shall also be unlawful to fail to maintain such records for a period of 12 months or to fail to provide the department access to such records during all regular business hours.

(k) Wild animal licenses shall not be issued unless the following conditions are met:

(1) The applicant must be at least 18 years of age;

(2) Applicants requesting a license for mammals must obtain a license from the Animal and Plant Health Inspection Service of the United States Department of Agriculture or provide written documentation that the applicant is exempt from such requirements;

(3) Applicants must submit documentation verifying that the proposed construction of facilities and the holding of wild animals is not prohibited by county or municipal ordinances;

- (4) The applicant must obtain required business licenses; and
- (5) Facilities for holding or exhibiting wild animals must be completely separated from a residence and meet specifications for humane handling, care, and confinement as provided in Code Section 27-5-6. (Ga. L. 1975, p. 1254, § 3; Code 1933, § 45-1101, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, §§ 64-66; Code 1933, § 45-1101.1, as redesignated by Ga. L. 1979, p. 1094, § 4; Ga. L. 1979, p. 1094, §§ 5-9; Ga. L. 1981, p. 798, § 17; Ga. L. 1985, p. 913, § 3; Ga. L. 1988, p. 842, § 6; Ga. L. 1989, p. 1552, § 14; Ga. L. 1991, p. 1157, § 3; Ga. L. 1994, p. 1742, § 2; Ga. L. 1997, p. 1395, § 4; Ga. L. 2006, p. 138, § 2/HB 695; Ga. L. 2012, p. 580, § 5/HB 865.)

**The 2012 amendment**, effective July 1, 2012, substituted “Department of Public Safety” for “Public Service Commission” near the end of subsection (d).

## **27-5-5. Wild animals for which license or permit required.**

(a) The following animals are considered to be inherently dangerous to human beings and are subject to the license or permit and insurance requirements provided for in subsection (f) of Code Section 27-5-4:

(1) Class Mammalia:

(A) Order Marsupialia: Genus *Macropus* (Kangaroos, wallabies, wallaroos) — All species;

(B) Order Primates:

(i) Family *Pongidae* (gibbons, orang-utan, chimpanzees, siamangs, and gorillas) — All species;

(ii) Family *Cercopithecidae*:

(I) Genus *Macaca* (macaques) — All species;

(II) Genus *Papio* (mandrills, drills, and baboons) — All species;

(III) *Theropithecus gelada* (Gelada baboon);

(C) Order Carnivora:

(i) Family *Canidae*:

(I) Genus *Canis* (wolves, jackals, and dingos); all species; except that any person possessing hybrid crosses between wolves and domestic animals on July 1, 1994, shall have until July 1, 1995, to apply for a fee-exempt permit to possess these animals as pets; provided, however, that the said hybrid is sexually neutered; provided, further, that it shall be unlawful to transfer possession or ownership of said hybrid without

prior written approval from the department. Liability insurance shall not be mandatory for wolf hybrids possessed under this fee-exempt permit;

- (II) *Chrysocyon brachyurus* (maned wolf);
- (III) *Cuon alpinus* (red dog);
- (IV) *Lycaon pictus* (African hunting dog);
- (ii) Family Ursidae (bears) — All species;
- (iii) Family Mustelidae — *Gulo gulo* (wolverine);
- (iv) Family Hyaenidae (hyenas) — All species;
- (v) Family Felidae:
  - (I) Genus *Leo* or *Panthera* or *Neofelis* (lions, tigers, jaguars, and leopards) — All species;
  - (II) *Uncia unica* (snow leopard);
  - (III) *Acinonyx jubatus* (cheetah);
  - (IV) *Felis concolor* (cougar) — All subspecies;
- (D) Order Proboscidae: Family Elephantidae (elephants) — All species;
- (E) Order Perissodactyla: Family Rhinocerotidae (rhinoceroses) — All species;
- (F) Order Artiodactyla:
  - (i) Family Suidae — *Phacochoerus aethiopicus* (wart hog);
  - (ii) Family Hippopotamidae — *Hippopotamus amphibius* (hippopotamus);
  - (iii) Family Bovidae:
    - (I) Genus *Taurotragus* (elands) — All species;
    - (II) *Boselaphus tragocamelus* (nilgais);
    - (III) *Bos sauveli* (kouprey);
    - (IV) *Syncerus caffer* (African buffalo);
    - (V) *Hippotragus niger* (sable);
    - (VI) *Oryx gazella* (gemsbok);
    - (VII) *Addax nasomaculatus* (addax);
    - (VIII) Genus *Alcelaphus* (hartebeests) — All species;
    - (IX) Genus *Connochaetes* (gnu, wildebeest) — All species;

## (2) Class Reptilia:

## (A) Order Crocodylia:

(i) Family Crocodylidae (crocodiles, gavials, etc.) — All species;

(ii) Family Alligatoridae — (alligators and caimans) — All species;

## (B) Order Squamata:

## (i) Suborder Serpentes:

(I) Family Elapidae (cobras, coral snakes, etc.) — All species;

(II) Family Viperidae (adders, vipers, etc.) — All species;

(III) Family Colubridae — All poisonous rear-fanged species (Opisthoglypis);

(IV) Family Crotalidae (pit vipers) — All species;

(ii) Suborder Lacertilia: Family Helodermatidae (Gila monsters and beaded lizards) — All species;

## (3) Class Osteichthyes:

(A) Order Cypriniformes (Suborder Characoidei): Family Characidae (tetra, piranha): Genera Serrasalmus, Serrasalmo, Pygocentrus, Taddyella, Rooseveltiella, Pygopristis (piranhas) — All species;

(B) Order Siluriformes: Family Trichomycteridae (parasitic catfishes): Genera Vandellia (candiru) and Urinophilus — All species; and

(4) Class Chondrichthyes (cartilaginous fish): Order Rajiformes: Family Potamotrygonidae (fresh-water stingray) — All species.

(b) Except as provided in this Code section, a license or permit is required for the following wild animals and any others specified by regulation of the board:

## (1) Class Mammalia:

(A) Order Marsupialia — All species other than those listed in subparagraph (a)(1)(A) of this Code section; except that Petaurus breviceps (sugar glider) may be sold, purchased, exhibited, or held as a pet without a license or permit if the owner thereof possesses valid documentation that the animal originated from a source inspected and regulated by the United States Department of Agriculture;

(B) Order Insectivora (shrews, moles, etc.) — All species;

(C) Order Dermoptera (flying lemurs) — All species;

(D) Order Chiroptera (bats) — All species;

(E) Order Primates (monkeys, apes, etc.) — All species except Family Hominidae;

(F) Order Edentata (sloths, armadillos, etc.) — All species;

(G) Order Pholidota (pangolins or scaly anteaters) — All species;

(H) Order Lagomorpha (rabbits, hares, etc.) — All species except Genus Oryctolagus; or any other normally domesticated species;

(I) Order Rodentia (rats, mice, etc.) — All species except Genus Cavia; Genus Gerbillus; Genus Mesocricetus; Mus musculus; Rattus rattus; Rattus norvegicus; or any other normally domesticated species;

(J) Order Cetacea (whales, dolphins, etc.) — All species;

(K) Order Carnivora (weasels, ferrets, cats, bears, wolves, etc.) — All species, except that a European ferret (*Mustela putorius furo*) may be sold, purchased, exhibited, or held as a pet without a license or permit; provided, however, that the ferret owner can provide valid documentation that the ferret was sexually neutered prior to seven months of age and is vaccinated against rabies with a properly administered vaccine approved for use on ferrets by the United States Department of Agriculture;

(L) Order Tubulidentata (aardvark) — All species;

(M) Order Proboscidea (elephants) — All species;

(N) Order Hyracoidea (conies) — All species;

(O) Order Sirenia (manatees, dugong) — All species;

(P) Order Perissodactyla (odd-toed ungulates) — All species;

(Q) Order Artiodactyla (even-toed ungulates) — All species except *Bison bison* (buffalo), *Bubalus bubalis* (water buffalo), and *Llama guanicoe*, *L. glama*, and *L. pacos* (llamas);

(2) Class Aves:

(A) Order Falconiformes (hawks, eagles, vultures, etc.) — All species except that persons possessing a federal falconry license shall be allowed to possess birds in the Order Falconiformes without obtaining a wild animal license;

(B) Order Galliformes: Family Meleagrididae (turkeys) — All species not normally domesticated;

- (C) Order Psittaciformes: *Myiopsitta monachus* (monk parakeet);
- (D) Order Cuculiformes: Family Cuculidae (cuckoos) — All species;
- (E) Order Strigiformes (owls) — All species;
- (F) Order Passeriformes:
  - (i) Family Alaudidae (larks): *Alauda arvensis* (sky larks);
  - (ii) Family Pycnonotidae (bulbuls) — All species;
  - (iii) Family Muscicapidae (thrushes, blackbirds, fieldfare, etc.): Genus *Turdus* — All species;
  - (iv) Family Zosteropidae (white eyes): Genus *Zosterops* — All species;
  - (v) Family Emberizidae (buntings, etc.): *Emberiza citrinella* (yellow hammer);
  - (vi) Family Ploceidae (sparrows, weavers, queleas, weaver finches, etc.):
    - (I) Genus *Passer* — All species except *Passer domesticus* (English house sparrow);
    - (II) *Ploceus capensis* (cape weaver);
    - (III) *Ploceus philippinus* (Baya weaver);
    - (IV) Genus *Quelea* — All species;
  - (vii) Family Icteridae (blackbirds, grackles, orioles, etc.): Genera *Molothrus*, *Quiscalus*, and *Agelaius* — All species;
  - (viii) Family Estrildidae (waxbills, ricebirds, munias, weaver finches, etc.): *Padda oryzivora* (Java sparrow);
  - (ix) Family Sturnidae (starlings, mynas, etc.) — All species except *Sturnus vulgaris* (starling) and *Gracula religiosa* (Hill mynas);
  - (x) Family Corvidae (crows, ravens, etc.) — All species;
- (3) Class Amphibia (Order Anura):
  - (A) Family Bufonidae (toads): *Bufo marinus*, *Bufo paracnemis*, *Bufo horribilis* (giant or marine toad group);
- (4) Class Osteichthyes (bony fish):
  - (A) Order Cypriniformes (Suborder Characoidei): Family Characidae (tetra, piranha);

- (i) *Astyanax faciatus* (banded tetra);
- (ii) Genera *Serrasalmus*, *Serrasalmo*, *Pygocentrus*, *Taddyella*, *Rooseveltiella*, *Pygopristis* (piranhas) — All species;
- (B) Order Cypriniformes (Suborder Cyprinoidei): Family Cyprinidae (carp, grass carp, orfe, etc.):
  - (i) *Ctenopharyngodon idella* (grass carp);
  - (ii) *Hypophthalmichthys molitrix* (silver carp);
  - (iii) *Aristichthys nobilis* (bighead carp);
- (C) Order Siluriformes:
  - (i) Family Clariidae (air-breathing catfishes) — All species;
  - (ii) Family Trichomycteridae (parasitic catfishes): Genera *Vandellia* (candiru) and *Urinophilus* — All species;
  - (iii) Family Heteropneustidae (giant walking catfishes): Genus *Heteropneustes* — All species;
- (D) Order Perciformes (Suborder Channoidei) Family Channidae (snakeheads): Genera *Ophicephalus* and *Channa* — All species;
- (5) Class Chondrichthyes (cartilaginous fish): Order Rajiformes: Family Potamotrygonidae (fresh-water stingray) — All species; and
- (6) All exotic fish which are not held in aquaria or tanks, provided that, as used in this Code section, "aquaria or tanks" means containers for holding fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank permitted by the county or in a waste-water treatment system permitted by the Environmental Protection Division of the department. For purposes of this paragraph, exotic fish are all fish species not native to Georgia. This paragraph shall not apply to any species of fish regulated by any other chapter of this title.
- (c) Any person who on July 1, 1994, possessed a wild animal for which a license or permit was not required prior to July 1, 1994, shall have until January 1, 1995, to apply for a fee-exempt permit, provided that the requirements of this chapter relating to insurance and humane handling, care, and confinement of wild animals are met. Such permits shall only be valid for wild animals possessed prior to July 1, 1994, and shall not authorize breeding, importation, sale, or transfer without specific authorization from the department. (Code 1933, § 45-1102, enacted by Ga. L. 1977, p. 396, § 1; Ga. L. 1978, p. 816, §§ 67, 68; Ga.

L. 1979, p. 1094, §§ 10-12; Ga. L. 1985, p. 913, § 4; Ga. L. 1991, p. 1157, § 4; Ga. L. 1992, p. 1636, § 7; Ga. L. 1994, p. 1742, § 3; Ga. L. 1996, p. 1219, § 19; Ga. L. 2008, p. 702, §§ 2, 3/HB 239.)

**The 2008 amendment**, effective May 13, 2008, in subparagraph (a)(1)(A), deleted “Family Macropodidae;” preceding “Genus” and inserted “, wallabies, wallaroos”; in subparagraph (b)(1)(A), deleted “(opossum, wallabies, etc.)” following “Marsupialia” at the beginning and added “other than those listed in subparagraph (a)(1)(A) of this Code section; except that *Petaurus breviceps* (sugar glider) may be

sold, purchased, exhibited, or held as a pet without a license or permit if the owner thereof possesses valid documentation that the animal originated from a source inspected and regulated by the United States Department of Agriculture”; and, in the middle of subparagraph (b)(1)(Q), inserted “, *Bubalus bubalis* (water buffalo),”.

# **TITLE 28**

## **GENERAL ASSEMBLY**

Chap.

1. General Provisions, 28-1-1 through 28-1-17.
2. Apportionment of House of Representatives and Senate; Qualifications of Members, 28-2-1 through 28-2-2.
4. Legislative Services, 28-4-1 through 28-4-9.
5. Financial Affairs, 28-5-1 through 28-5-127.
12. 2010 Special Council and Committee on Tax Reform and Revenue.
13. 2011 Special Council and Committee on Criminal Justice Reform.

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### **CHAPTER 1**

#### **GENERAL PROVISIONS**

Sec.

28-1-8. Salary and allowances of members and officers.  
28-1-8.1. Failure of members to file state income tax returns.  
28-1-16. (Effective January 1, 2013. See

Sec.

note.) Issuance of subpoenas by Superior Court of Fulton County on behalf of the Committees on Ethics of the Senate and House of Representatives.

#### **28-1-8. Salary and allowances of members and officers.**

(a) Each member of the General Assembly shall receive an annual salary, as provided for in Code Section 45-7-4, to be paid in equal monthly installments. Upon complying with the requirements of paragraph (22) of subsection (a) of Code Section 45-7-4, each member shall also be reimbursed for those actual expenses incurred in the performance of duties for which reimbursement is provided in paragraph (22) of subsection (a) of Code Section 45-7-4. The Speaker of the House of Representatives, the Speaker Pro Tempore of the House of Representatives, and the President Pro Tempore of the Senate shall receive an additional amount per annum as provided for in Code Section 45-7-4. The majority leader, the minority leader, the administration floor leader, and the assistant administration floor leaders of the House of Representatives and the majority leader, the minority leader, the administration floor leader, and the assistant administration floor leaders of the Senate shall each receive such additional amount per

annum as shall be provided by resolution of the respective houses; but such amount for each shall not be greater than the additional amount provided by law for the Speaker Pro Tempore of the House of Representatives. All of such additional amounts shall also be paid in equal monthly installments.

(b)(1) During regular and extraordinary sessions of the General Assembly, each member shall also receive a daily expense allowance. Each member shall also receive the mileage allowance for the use of a personal car when devoted to official business as provided for in Code Section 50-19-7, for not more than one round trip to and from the member's residence and the state capitol by the most practical route, per calendar week, or portion thereof, during each regular and extraordinary session. In the event a member travels by public carrier for any part of a round trip as provided above, such member shall receive a travel allowance of actual transportation costs for each such part in lieu of the mileage allowance. For each day's service within the state as a member of a standing committee or of an interim committee created by or pursuant to a resolution of either or both houses or as a member of a committee, board, bureau, commission, or other agency created by or pursuant to statute or the Constitution of Georgia, such member shall receive a daily expense allowance and the mileage allowance for the use of a personal car when devoted to official business as provided for in Code Section 50-19-7 or a travel allowance of actual transportation costs if traveling by public carrier. Any such member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her official duties as a member of any committee, board, bureau, commission, or other agency. In the event it becomes necessary for a committee to rent a meeting room in the performance of the duties of the committee, the committee chairperson must have prior written approval of the President of the Senate or the Speaker of the House, or both, as the case may be, depending on the composition of the committee. The expense of such rental shall be billed to the committee. For each day's service out of state as a member of any committee, board, bureau, commission, or other agency, such member shall receive actual expenses as an expense allowance, plus the mileage allowance for the use of a personal car when devoted to official business as provided for in Code Section 50-19-7 or a travel allowance of actual transportation costs if traveling by public carrier or by rental motor vehicle. The amount of the daily expense allowances provided for in this paragraph shall be fixed by the Legislative Services Committee; provided, however, that the amount of the daily expense allowance shall remain at \$75.00 until changed by the Legislative Services Committee. The Legislative Services Committee shall periodically review, and when appropriate revise, the amount of

the daily expense allowance. The amount of the daily expense allowance shall be fixed by the Legislative Services Committee in an amount which reasonably corresponds to the housing and meal expenses typically incurred by members in the performance of their duties; provided, however, that the amount so fixed shall not exceed the federal per diem rate in effect for the state capital as specified by the General Services Administration at the time that the committee acts.

(2) Transportation costs incurred by a member of the Senate for air travel within or without the state during the interim as a member of a committee, board, bureau, commission, or other agency shall be reimbursed only if the incurring of such costs is approved under procedures established by the Senate Administrative Affairs Committee. Transportation costs incurred by a member of the House of Representatives for air travel within or without the state during the interim as a member of a committee, board, bureau, commission, or other agency shall be reimbursed only if the incurring of such costs is approved under procedures established by the Speaker of the House.

(3) Notwithstanding any other provision of this subsection to the contrary, reimbursement of authorized transportation costs incurred by a member of the General Assembly for air travel inside or outside the state at any time shall be limited to the amounts provided for in the state-wide contract. As used in this paragraph, the term "state-wide contract" means the state-wide contract for airline travel incorporated in the state travel regulations established by the State Accounting Office. This limitation shall not apply, however, if the air travel is between pairs of cities not covered in the state-wide contract, if no state-wide contract is in effect, if the contracted flight is other than a nonstop flight, the contracted flight would cause the member undue hardship or would conflict with the member's schedule, or if passage under a state-wide contract is otherwise not reasonably available. When reimbursement is requested for an amount in excess of the amount provided in the state-wide contract, the member shall sign a statement indicating which of the foregoing exceptions applies.

(4) All allowances provided for in this subsection shall be paid upon the submission of proper vouchers.

(c) No member shall receive any expense allowance, mileage allowance, or travel allowance for service as a member of any committee, board, bureau, commission, or other agency, as provided for in this Code section, unless such member has personally performed the service and has personally incurred the expense for mileage or travel. Each member of the General Assembly submitting a voucher shall certify that such member personally performed the service and personally incurred the expense for mileage or travel covered by the voucher and that the

information contained on the voucher is true and correct. The voucher shall contain such a certificate which the member must sign.

(d) It shall be unlawful for any member willfully to make a certificate, as provided for in subsection (c) of this Code section, knowing it to be false; and any member convicted of making such a false certificate shall be punished by a fine of not more than \$1,000.00, or by imprisonment of not less than one nor more than five years, or both. No member of the General Assembly shall receive any compensation, salary, per diem, expenses, allowances, mileage, costs, or any other remuneration whatsoever for service as a member of the General Assembly other than as provided for in this Code section.

(e) The Senate Rules Committee shall designate an audit subcommittee to examine and review, not less than once every two months, legislative expenditures, including all vouchers submitted by members of the Senate, as provided for in this Code section, for which the members have received payment. The subcommittee is authorized to issue reports of its examination and review. The House Information and Audits Committee shall examine and review, not less than once every two months, legislative expenditures, including all vouchers submitted by members of the House of Representatives, as provided for in this Code section, for which the members have received payment. The committee is authorized to issue reports of its examination and review.

(f) If sickness prevents any member from attending the house of which he is a member during any session of the General Assembly, he shall be entitled to the same daily expense allowance as an attending member. No member shall receive a daily expense allowance for absent time except on account of sickness of himself or his family or by express leave of the house of which he is a member.

(g) Prior to January 10, 1983, if any member of the General Assembly dies during or after a regular or extraordinary session without having received all or any portion of his daily expense allowance for such session, the amount due for the whole session shall be paid to the surviving spouse of the deceased; and if there is no surviving spouse, in like manner to the children; and if there are no children, in like manner to the mother; and if there is no mother, in like manner to the father; and if there is no father, in like manner to the estate of the deceased member.

(h) From and after January 10, 1983, if any member of the General Assembly dies during or after a regular or extraordinary session without having received all or any portion of the member's daily expense allowance for such session, the amount due for the whole session shall be paid to the surviving spouse of the deceased; and if there is no surviving spouse, in like manner to the children; and if there

are no children, in like manner to the estate of the deceased member. The member's salary for the full calendar month during which the member dies shall be paid in the same manner. (Orig. Code 1863, §§ 184, 185, 186; Code 1868, §§ 178, 179, 180; Ga. L. 1871-72, p. 18, § 1; Code 1873, §§ 189, 190, 191; Code 1882, §§ 189, 190, 191; Civil Code 1895, §§ 309, 310, 311; Civil Code 1910, §§ 351, 352, 353; Ga. L. 1918, p. 89, § 1; Ga. L. 1919, p. 76, § 1; Code 1933, §§ 47-107, 47-108, 47-109; Ga. L. 1960, p. 141, § 1; Ga. L. 1966, p. 544, § 1; Ga. L. 1967, p. 39, § 1; Ga. L. 1970, p. 647, § 1; Ga. L. 1971, p. 207, § 1; Ga. L. 1972, p. 248, § 1; Ga. L. 1975, p. 155, § 1; Ga. L. 1976, p. 763, § 1; Ga. L. 1981, p. 699, § 1; Ga. L. 1982, p. 3, § 28; Ga. L. 1985, p. 1055, § 1; Ga. L. 1986, p. 10, § 28; Ga. L. 1986, p. 311, § 1; Ga. L. 1986, p. 314, § 1; Ga. L. 1992, p. 3041, § 1; Ga. L. 1996, p. 1302, § 1; Ga. L. 1999, p. 1242, § 1; Ga. L. 2001, p. 865, § 1; Ga. L. 2005, p. 694, § 30/HB 293; Ga. L. 2009, p. 303, § 17/HB 117.)

**The 2009 amendment**, effective April 30, 2009, substituted "House Information and Audits Committee" for "Journals Committee of the House of Representatives" in the second sentence of subsection (e).

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, Code Section 28-1-8, as enacted by Ga. L. 2009, p. 620, § 7, was redesignated as Code Section 28-1-8.1.

**Editor's notes.** — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

### 28-1-8.1. Failure of members to file state income tax returns.

(a) The state revenue commissioner shall be required to report to the chairperson of the Senate Ethics Committee the name of any Senator who has not filed a Georgia personal income tax return required by law to be filed by the Senator or is a defaulter for state income taxes in violation of Article II, Section II, Paragraph III of the Constitution. The state revenue commissioner shall be required to report to the chairperson of the House Committee on Ethics the name of any Representative who has not filed a Georgia personal income tax return required by law to be filed by the Representative or is a defaulter for state income taxes in violation of Article II, Section II, Paragraph III of the Constitution.

(b) The state revenue commissioner shall give written notice by registered or certified mail, return receipt requested, or statutory overnight delivery of any report under this Code section to the member of the General Assembly who is to be named at least 30 days prior to making such report.

(c) Upon receipt of a report under this Code section, the chairperson of the committee to whom the report is made shall undertake an

appropriate investigation of the matter and report the findings of the investigation to the presiding officer of his or her chamber.

(d) Nothing in this Code section shall apply with respect to a tax return for which the taxpayer has timely applied for and received an unexpired extension of time to file.

(e) The provisions of this Code section shall control over the provisions of Code Section 48-7-60 or any other law relating to confidential treatment of state income tax return information. (Code 1981, § 28-1-8.1, enacted by Ga. L. 2009, p. 620, § 7/SB 168.)

**Effective date.** — This Code section became effective May 4, 2009.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2009, Code

Section 28-1-8, as enacted by Ga. L. 2009, p. 620, § 7, was redesignated as Code Section 28-1-8.1.

#### **28-1-14. Notice of intention to introduce local bill; copies to governing authorities.**

#### **JUDICIAL DECISIONS**

**Applicability.** — Ga. L. 2007, p. 598, § 1 et seq. (H.B. 264), which amends the Homestead Option Sales and Use Tax (HOST) Act, O.C.G.A. § 48-8-100 et seq., is not local legislation subject to the notice requirements of O.C.G.A. § 28-1-14 because H.B. 264, in amending the HOST Act, is a general law as it applies in

precisely the same way and without exception to every special tax district in the state that currently meets or may, in the future, meet its criteria; therefore, no compliance with the notice requirements of § 28-1-4 was required. *DeKalb County v. Perdue*, 286 Ga. 793, 692 S.E.2d 331 (2010).

#### **28-1-16. (Effective January 1, 2013. See note.) Issuance of subpoenas by Superior Court of Fulton County on behalf of the Committees on Ethics of the Senate and House of Representatives.**

(a) If the Committee on Ethics of the Senate or House of Representatives determines that the effective functioning of the committee requires the issuance of compulsory process to secure the attendance of a witness or the production of documents and materials, or if a person whose conduct is called into question in an investigation or other proceeding requests the issuance of such compulsory process, the chairperson or acting chairperson shall make application in writing to the presiding judge of the Superior Court of Fulton County for the issuance of an appropriate subpoena. Such application shall:

(1) Describe in general terms the investigation or other proceeding for which the issuance of subpoena is sought and identify the provisions of the Senate or House rules authorizing the committee to conduct such investigation or proceeding;

(2) In the case of process to secure the attendance of a witness, identify the witness; the general nature of the questions to be propounded to the witness; and the reasons for believing that the testimony of the witness is likely to be relevant to the authorized scope of the investigation or proceeding;

(3) In the case of process to secure the production of documents and materials, identify the person to whom the subpoena is to be directed; the general nature of the documents and materials in question; and the reasons for believing that such documents and materials are likely to be relevant to the authorized scope of the investigation or proceeding;

(4) State whether confidential treatment of the application for and issuance of the subpoena is requested;

(5) If the application is submitted on behalf of a person whose conduct is called into question, be accompanied by any materials in support of the application which such person desires to have transmitted to the court with the application; and

(6) If the application is submitted on motion of the committee, be sought by the chairperson or acting chairperson only after notification to the person whose conduct is in issue that the subpoena will be sought.

(b) The presiding judge shall act on such application within 48 hours after it is presented to the judge. If the judge finds that the committee is acting within the scope of the authority granted to it by the rules of the Senate or House and that the testimony or documents or materials sought to be elicited appear to be likely to be relevant to the authorized scope of the investigation or proceeding, the judge may cause an appropriate subpoena to be issued and transmitted to the chairperson or acting chairperson. If the judge deems it necessary or appropriate, the judge may hold a closed or open hearing with respect to his or her determination of this matter.

(c) When authorized by the rules of the Senate and House, the confidential treatment of material and information in the course of investigations and other proceedings of the Committees on Ethics shall be recognized by law. Such confidential treatment shall be preserved in proceedings under this Code section as provided in this subsection. If the application for a subpoena requests confidential treatment, the court shall in any event take any and all steps necessary or appropriate to preserve the confidentiality of the application. The court may, but shall not be required to, issue the subpoena in such a manner as to preserve its confidentiality. If the court determines that a subpoena may be issued but confidential treatment is not warranted under the rules of the Senate or House, the judge shall so notify the chairperson

or acting chairperson; and the chairperson or acting chairperson shall then have the option to:

- (1) Abandon the request for a subpoena, in which case the application shall remain confidential; or
- (2) Accept the determination of the court, in which case the subpoena shall issue, but the application and the issuance shall not be treated as confidential.

(d) In case of refusal to obey a subpoena issued under this Code section to any person, the Superior Court of Fulton County, upon application by the chairperson or acting chairperson, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(e) (Effective January 1, 2013. See note.) A subpoena issued under this Code section may be served at any place in this state and in any manner authorized in Code Section 24-13-24. Fees and mileage shall be paid and tendered as provided in Code Section 24-13-25, notwithstanding the general exemption of the state from tender of fees and mileage, and shall be in the form of a check issued by the Legislative Fiscal Office upon the written request of the chairperson or acting chairperson.

(f) Any decision of the court under this Code section shall be appealable in the same manner as provided by law for the appeal of a final judgment in a civil action. (Code 1981, § 28-1-16, enacted by Ga. L. 1993, p. 1390, § 1; Ga. L. 2003, p. 140, § 28; Ga. L. 2011, p. 99, § 40/HB 24.)

**Delayed effective date.** — This Code section, as set forth above, is effective on January 1, 2013. For the version of this Code section effective until that date, see the bound volume.

**The 2011 amendment**, effective January 1, 2013, in subsection (e), in the first sentence, substituted “this state” for “the state” in the middle and substituted “Code Section 24-13-24” for “Code Section 24-10-23” at the end, and substituted “Code Section 24-13-25” for “Code Section 24-10-24” near the beginning of the last

sentence. See editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

## CHAPTER 2

### APPORTIONMENT OF HOUSE OF REPRESENTATIVES AND SENATE; QUALIFICATIONS OF MEMBERS

Sec.	Sec.
28-2-1. Apportionment and qualifications for the House of Representatives.	28-2-2. Apportionment and qualifications for the Senate.

#### **28-2-1. Apportionment and qualifications for the House of Representatives.**

(a)(1) There shall be 180 members of the House of Representatives.

(2) The General Assembly by general law shall divide the state into 180 representative districts which shall consist of either a portion of a county or a county or counties or any combination thereof and shall be represented by one Representative elected only by the electors of such district.

(b) A member of the House of Representatives shall be a resident of the district which such member represents and at the time of such member's election shall have been a resident of the territory embraced within such district for at least one year preceding such time. (Code 1981, § 28-2-1, enacted by Ga. L. 2011, Ex. Sess., p. 3, § 3/HB 1EX.)

**Effective date.** — This Code section became effective August 24, 2011.

**Editor's notes.** — This Code section formerly pertained to apportionment and qualifications for the House of Representatives. The former Code section was based on Ga. L. 1890-91, p. 192, § 1; Civil Code 1895, § 291; Ga. L. 1901, p. 51, § 1; Civil Code 1910, § 333; Ga. L. 1921, p. 229, § 1; Ga. L. 1931, p. 48, § 1; Code 1933, § 47-101; Ga. L. 1941, p. 348, § 1; Ga. L. 1951, p. 26, § 1; Ga. L. 1953, p. 10, § 1; Ga. L. 1961, p. 111, § 1; Ga. L. 1965, p. 127, § 1; Ga. L. 1967, p. 187, § 1; Ga. L. 1968, p. 209, § 1; Ga. L. 1971, Ex. Sess., p. 22, § 1; Ga. L. 1972, p. 250, § 1; Ga. L. 1974, p. 16, § 1; Ga. L. 1978, p. 1043, § 1; Ga. L. 1981, Ex. Sess., p. 12, § 1; Ga. L. 1982, p. 452, §§ 1, 2; Ga. L. 1983, p. 1123, §§ 1, 2; Ga. L. 1984, p. 1071, § 1; Ga. L. 1985, p. 1472, § 1; Ga. L. 1986, p. 466, § 1; Ga. L. 1991, Ex. Sess., p. 186, § 1; Ga. L. 1992, p. 133, § 1; Ga. L. 1992, p. 492, § 1; Ga. L. 1992, p. 827, § 1; Ga. L.

1993, p. 813, §§ 1, 2; Ga. L. 1994, p. 133, § 1; Ga. L. 1994, p. 174, § 1; Ga. L. 1995, p. 795, § 1; Ga. L. 1995, Ex. Sess., p. 72, §§ 1-3; Ga. L. 1997, p. 229, §§ 1-3; Ga. L. 1998, p. 11, § 1; Ga. L. 2001, Ex. Sess., p. 425, §§ 1-3 and was repealed by Ga. L. 2011, Ex. Sess., p. 3, § 3/HB 1EX, effective August 24, 2011.

Ga. L. 2011, Ex. Sess., p. 3, § 1/HB 1EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia House of Representatives Reapportionment Act of 2011.'"

Ga. L. 2011, Ex. Sess., p. 3, § 2/HB 1EX, as amended by Ga. L. 2012, p. 21, § 1/HB 829 and the attachment thereto identified as "Plan: HSEPROP1 Plan Type: HOUSE Administrator: H167 User: STAFF", not codified by the General Assembly, contains the description of the state house districts and related definitions, effectiveness, and applicability provisions.

Ga. L. 2011, p. 3, § 4/HB 1EX, not

codified by the General Assembly, provides: "The apportionment of the House of Representatives and the description of House Districts 1 through 180 provided for pursuant to this Act shall supersede and replace the apportionment of the House of Representatives and the description of House Districts 1 through 180 provided for pursuant to the 2004 interim House apportionment plan of the Special Master adopted by the United States Dis-

trict Court for the Northern District of Georgia in Larios v. Cox, 314 F. Sup. 2d 1357 (N.D. Ga. 2004) and descriptions of House Districts 5, 12, 46, 48, 50, 51, 167, and 179 as provided in an Act approved March 1, 2006 (Ga. L. 2006, p. 12)."

**Law reviews.** — For comment, "Pin-point Redistricting and the Minimization of Partisan Gerrymandering," see 59 Emory L.J. 211 (2009).

## 28-2-2. Apportionment and qualifications for the Senate.

(a) There shall be 56 members of the Senate. The General Assembly shall by general law divide the state into 56 Senate districts which shall be composed of a portion of a county or a county or counties or a combination thereof and shall be represented by one Senator elected only by the electors of such district.

(b) A member of the Senate shall be a resident of the district which such member represents and at the time of such member's election shall have been a resident of the territory embraced within such district for at least one year preceding such time. (Code 1981, § 28-2-2, enacted by Ga. L. 2011, Ex. Sess., p. 139, § 3/SB 1EX.)

**Effective date.** — This Code section became effective August 24, 2011.

**Editor's notes.** — This Code section formerly pertained to apportionment and qualifications for the Senate. The former Code section was based on Ga. L. 1906, p. 80, § 1; Civil Code 1910, § 334; Ga. L. 1918, p. 84, §§ 1-4; Code 1933, § 47-102; Ga. L. 1945, p. 1042, §§ 1, 2; Ga. L. 1946, p. 42, § 1; Ga. L. 1962, Ex. Sess., p. 7, § 9; Ga. L. 1964, p. 127, § 2; Ga. L. 1964, p. 691, §§ 1, 2; Ga. L. 1966, p. 245, §§ 1, 2; Ga. L. 1966, p. 561, § 1; Ga. L. 1967, p. 159, § 1; Ga. L. 1968, p. 36, § 1; Ga. L. 1968, p. 560, § 1; Ga. L. 1970, p. 557, § 1; Ga. L. 1971, Ex. Sess., p. 69, § 1; Ga. L. 1972, p. 237, § 2; Ga. L. 1974, p. 1233, § 1; Ga. L. 1981, Ex. Sess., p. 103, § 1; Ga. L. 1982, p. 444, §§ 1, 2; Ga. L. 1984, p. 394, § 1; Ga. L. 1988, p. 1465, § 1; Ga. L. 1991, Ex. Sess., p. 124, § 1; Ga. L. 1992, p. 59, § 1; Ga. L. 1992, p. 693, § 1; Ga. L. 1993, p. 863, § 2; Ga. L. 1994, p. 174, § 2; Ga. L. 1995, Ex. Sess., p. 6, §§ 1-3; Ga. L. 1997, p. 163, §§ 1-3; Ga. L. 1998, p. 21, § 1; Ga. L. 1999, p. 42, § 1; Ga. L. 2000, p. 1676, § 1; Ga. L. 2001, Ex. Sess., p. 2, §§ 1, 2; Ga. L.

2006, p. 23, § 1/SB 386 and was repealed by Ga. L. 2011, Ex. Sess., p. 139, § 3/SB 1EX, effective August 24, 2011.

Ga. L. 2011, Ex. Sess., p. 139, § 1/SB 1EX, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Senate Reapportionment Act of 2011.'"

Ga. L. 2011, Ex. Sess., p. 139, § 2/SB 1EX, as amended by Ga. L. 2012, p. 62, § 1/SB 430 and the attachment thereto identified as "Plan Name: Senprop1 Plan Type: Senate Administrator: S028 User: Gina", not codified by the General Assembly, contains the description of the state senate districts and related definitions, effectiveness, and applicability provisions.

Ga. L. 2011, Ex. Sess., p. 139, § 4/SB 1EX, not codified by the General Assembly, provides that: "The apportionment of the Senate and the description of Senate Districts 1 through 56 provided for pursuant to this Act shall supersede and replace the apportionment of the Senate and the description of Senate districts provided for pursuant to the 2004 interim Senate apportionment plan of the Special Master

adopted by the United States District Court for the Northern District of Georgia in Larios v. Cox, 314 F. Sup. 2d 1357 (N.D. Ga. 2004), as well as the revised statutory description of Senate Districts 46, 47, and 49.”

Ga. L. 2012, p. 62, § 2/SB 430, not codified by the General Assembly, provides that: “This section shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval. The remaining sections of this Act shall become effective upon receipt of preclearance pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended; provided, however, that, if this Act has not received preclearance pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended, by the time of the beginning of qualifying for

the 2012 general primary, the remaining sections of this Act shall not be effective for the primary and general elections of 2012 for the purpose of electing members of the Senate who are to take office in 2013, but shall become effective on January 1, 2014, provided this Act has received preclearance as provided by law. If this Act has not received preclearance pursuant to Section 5 of the federal Voting Rights Act of 1965, as amended, by December 31, 2013, this Act shall stand automatically repealed by operation of law on January 1, 2014.” This Act became effective April 13, 2012.

**Law reviews.** — For comment, “Pinpoint Redistricting and the Minimization of Partisan Gerrymandering,” see 59 Emory L.J. 211 (2009).

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## CHAPTER 4

### LEGISLATIVE SERVICES

Sec.		Sec.	
28-4-3.	Office of Legislative Counsel; creation; qualifications; powers and duties.	28-4-7.	Personnel to assist legislative counsel and legislative fiscal officer; offices and supplies.
28-4-6.	Employment, powers, and duties of legislative fiscal officer.		

#### **28-4-3. Office of Legislative Counsel; creation; qualifications; powers and duties.**

(a) There is created the Office of Legislative Counsel. The legislative counsel shall be an attorney skilled and experienced in legislative matters and bill drafting.

(b) It shall be the duty of the legislative counsel to:

(1) Provide bill-drafting services which shall be equally available to every member of the General Assembly; and

(2) Advise and counsel members of the General Assembly on legislative matters.

(c) The legislative counsel is authorized to:

(1) Provide for statutory and Code revision, render opinions, assist standing and interim committees, and perform similar legislative functions;

- (2) Perform research, issue reports, and make recommendations as a result thereof;
- (3) Exchange information, data, and material with similar agencies in other states;
- (4) Provide legal services for the legislative branch of government and, with the approval of the committee or the chairman, to represent the interests of the legislative branch in matters involving litigation; and
- (5) With the approval of the committee, provide for advisory committees relative to statutory and Code revision. He is authorized to seek the advice and assistance of the State Bar of Georgia, law schools, and individuals and organizations knowledgeable in this field.
- (d) Any other provisions of law to the contrary notwithstanding, he is authorized to engage the services of others, including private counsel, by contract or otherwise, to assist him in the performance of his duties and is authorized to provide for the payment of fees, compensation, and expenses therefor from legislative funds.
- (e) The legislative counsel shall provide for the compiling, indexing, editing, and publication of the Georgia Laws containing the Acts and resolutions of the General Assembly and other appropriate materials. Except as otherwise authorized in Code Section 50-18-2, such Acts and resolutions shall be published in hardbound volumes suitable for retention as permanent records. In the case of any special session of the General Assembly, however, the separate publication and distribution of the Acts and resolutions enacted at that special session may be omitted, and in such case the Acts and resolutions enacted at the special session shall be published and distributed together with those enacted at the subsequent regular session. Distribution of the Georgia Laws shall be carried out by the Secretary of State as provided for in Code Section 45-13-22; and the Secretary of State shall notify the legislative counsel of the numbers of volumes required to carry out such distribution.
- (f) The legislative counsel shall have such other authority and duties as the committee may provide. (Ga. L. 1959, p. 152, § 3; Ga. L. 1965, p. 270, § 1; Ga. L. 1966, p. 586, § 1; Ga. L. 1969, p. 635, § 1; Ga. L. 1976, p. 176, §§ 3, 5; Ga. L. 1988, p. 7, § 1; Ga. L. 1990, p. 782, § 1; Ga. L. 1993, p. 91, § 28; Ga. L. 2010, p. 838, § 1/SB 388.)

**The 2010 amendment**, effective June 3, 2010, in subsection (e), in the second sentence, substituted “authorized in Code Section 50-18-2” for “provided in this subsection” and deleted the language “as well

as in softbound volumes or pamphlets suitable for prompt distribution of newly enacted laws to public officers, attorneys, and the public; and following each session of the General Assembly, a copy of such

softbound Georgia Laws shall be furnished to the clerk of superior court of each county within 30 days after the last date on which the Governor may approve or veto bills enacted at that session of the General Assembly" following "records" from the end.

**Law reviews.** — For discussion of history, staffing, procedures, and duties of the Office of Legislative Counsel, see 23 Ga. St. B.J. 114 (1987).

## **28-4-6. Employment, powers, and duties of legislative fiscal officer.**

(a) The Legislative Services Committee is authorized to employ a legislative fiscal officer for the legislative branch of government. The fiscal officer shall act as the bookkeeper-comptroller for the legislative branch of government and shall maintain an account of legislative expenditures and commitments. Such fiscal officer shall maintain an inventory of the equipment, furnishings, and nonexpendable items belonging to the legislative branch. Such fiscal officer shall prepare and sign vouchers pertaining to the expenditure of legislative funds. Such fiscal officer shall prepare and sign all warrants for the expenditure of funds appropriated to and available to the legislative branch of government. Such warrants shall be paid by the fiscal officer, and it shall not be necessary that they be countersigned by the Comptroller General. All payments from funds appropriated to the legislative branch of government shall be made by the fiscal officer, and reference in any other law to any other official or person in connection with any duties pertaining to such payments shall be deemed to refer to the fiscal officer; all duties of any such other official or person in connection therewith are transferred to the fiscal officer. The fiscal officer shall be under such bond as the Legislative Services Committee shall prescribe, and the premium thereon shall be paid from funds appropriated to the legislative branch of government. The fiscal officer shall have such other duties as shall be prescribed by the committee.

(b) The legislative fiscal officer is authorized on behalf of the legislative branch to pay any properly authorized invoice which does not exceed \$5,000.00. Any invoice which exceeds \$5,000.00 may not be paid by such fiscal officer without prior approval from the committee. The committee may provide for such approval to be given at meetings of the committee, or in writing between meetings by a majority of the members of the committee, or in such other manner as the committee may establish. All invoices shall contain in detail a description of the work performed, materials used or purchased, and any other information pertinent to the obligation. Before the fiscal officer may pay any invoice, a requisition or purchase order covering such invoice and signed by the person or persons authorized by the Legislative Services Committee to do so plus evidence of delivery must have been submitted to the fiscal officer. A list of all invoices which have been paid shall be submitted by the fiscal officer to the committee on a monthly basis.

(c) A majority vote of the total membership of the Legislative Services Committee shall be necessary to employ the legislative fiscal officer. (Ga. L. 1959, p. 152, § 5; Ga. L. 1961, p. 230, § 1; Ga. L. 1969, p. 232, § 1; Ga. L. 1971, p. 67, § 1; Ga. L. 1976, p. 176, § 4; Ga. L. 1984, p. 359, §§ 5, 6; Ga. L. 1990, p. 366, § 2; Ga. L. 2008, p. VO1, § 1-12/HB 529.)

**The 2008 amendment**, effective January 28, 2008, in subsection (a), substituted “Such fiscal officer shall” for “He shall” throughout and, in the first sentence, deleted “, and the fiscal officer and personnel to assist him shall be a part of the Office of Legislative Counsel” following “government” at the end; redesignated former subsection (a.1) as present subsection (b) and deleted former subsection (b), which read: “The Legislative Services Committee is authorized to employ a legislative budget analyst to assist the General Assembly and its committees in connection with appropriations and budgetary matters. The legislative budget analyst shall render assistance and give advice to the appropriations committees of the Senate and the House of Representatives. He is authorized to request information and material from all state departments, boards, bureaus, commissions, commit-

tees, authorities, and agencies in connection with his duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as he shall request. The legislative budget analyst shall perform such other duties as the General Assembly, the Legislative Services Committee, and the appropriations committees shall prescribe.”; and, in subsection (c), deleted “and the legislative budget analyst” following “fiscal officer” at the end. See editor’s note.

**Editor’s notes.** — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

## 28-4-7. Personnel to assist legislative counsel and legislative fiscal officer; offices and supplies.

The Office of Legislative Counsel and the Office of Legislative Fiscal Officer shall be under the budgetary control of the Legislative Services Committee. The committee shall provide procedures for the employment of personnel to assist the legislative counsel and the legislative fiscal officer; and those two officials and such personnel shall be compensated under such procedure as the committee shall provide. The two officials shall have supervision of personnel in their offices relative to the duties of their employment. The committee shall provide office space for the offices and furnish them with supplies, materials, furniture, furnishings, books, equipment, and services. (Ga. L. 1959, p. 152, § 5; Ga. L. 1976, p. 176, § 4; Ga. L. 1984, p. 359, § 7; Ga. L. 2008, p. VO1, § 1-13/HB 529.)

**The 2008 amendment**, effective January 28, 2008, substituted “Counsel and the Office of Legislative Fiscal Officer” for “Counsel, the Office of Legislative Fiscal Officer, and the Office of Legislative Bud-

get Analyst” near the beginning of the first sentence; in the second sentence, substituted “and the legislative fiscal officer” for “, the legislative fiscal officer, and the legislative budget analyst”; substituted

“two officials” for “three officials” in the second and third sentences; and deleted “three” following “office space for the” in the last sentence. See editor’s note.

**Editor’s notes.** — Ga. L. 2008, p. VO1, which amended this Code section, was

passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

## CHAPTER 5

### FINANCIAL AFFAIRS

#### Article 1

##### General Provisions

#### Sec.

tures; furnishing of fiscal notes.

Sec. 28-5-5. Budgetary Responsibility Oversight Committee; members; duties; other entities to cooperate with committee; annual report; allowances; performance audits [Repealed].

28-5-6. Powers, duties, and responsibilities of the Senate Budget Office and the House Budget Office.

Sec. 28-5-60. Creation; membership; representation of members by deputies or other designated employees.

#### Article 3

##### Fiscal Bills Generally

28-5-42. Introduction of bills having significant impact upon anticipated revenues or expendi-

28-5-122. Publication of description of grant program by agency as prerequisite to making grants.

#### Article 5

##### Fair and Open Grants

**28-5-5. Budgetary Responsibility Oversight Committee; members; duties; other entities to cooperate with committee; annual report; allowances; performance audits.**

Reserved. Repealed by Ga. L. 2008, p. VO1, § 2-1, effective January 28, 2008.

**Editor’s notes.** — This Code section was based on Code 1981, § 28-5-5, enacted by Ga. L. 1993, p. 1914, § 18; Ga. L. 1994, p. 97, § 28; Ga. L. 1995, p. 923, § 1; Ga. L. 2005, p. 1036, § 22/SB 49.

Ga. L. 2008, p. VO1, which repealed this

Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

Ga. L. 2008, p. 324, § 28, effective May 12, 2008, added the "Reserved" designation.

### 28-5-6. Powers, duties, and responsibilities of the Senate Budget Office and the House Budget Office.

(a) The Senate is authorized to establish and provide for a Senate Budget Office. The House of Representatives is authorized to establish and provide for a House Budget Office.

(b) The director of the Senate Budget Office is authorized to request information and material from all state departments, boards, bureaus, commissions, committees, authorities, and agencies in connection with his or her duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as the director shall request.

(c) The director of the House Budget Office is authorized to request information and material from all state departments, boards, bureaus, commissions, committees, authorities, and agencies in connection with his or her duties; and all such departments, boards, bureaus, commissions, committees, authorities, and agencies are directed to furnish such information and material as the director shall request. All information and material received by the House Budget Office under this subsection shall be made available to the chairpersons of the House Appropriations Committee, the House Budget and Fiscal Affairs Oversight Committee, and other officers of the House of Representatives as may be designated by the Speaker of the House; and upon direction by such chairpersons and such other officers of the House as may be designated by the Speaker of the House, the House Budget Office shall request any needed information and material from any state department, board, bureau, commission, committee, authority, or agency. (Code 1981, § 28-5-6, enacted by Ga. L. 2008, p. VO1, § 1-14/HB 529.)

**Effective date.** — This Code section became effective January 28, 2008. See editor's note.

**Editor's notes.** — Ga. L. 2008, p. VO1, which enacted this Code section, was passed by the General Assembly as HB

529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

**ARTICLE 3**  
**FISCAL BILLS GENERALLY**

**28-5-40. Short title.**

**Law reviews.** — For article, “Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively, to Revenue and Taxation, Agriculture, the

General Assembly, Insurance, Local Government, Public Utilities, and State Government,” see 28 Ga. St. U. L. Rev. 217 (2011).

**28-5-42. Introduction of bills having significant impact upon anticipated revenues or expenditures; furnishing of fiscal notes.**

(a)(1) Any bill having a significant impact on the anticipated revenue or expenditure level of any state department, bureau, board, council, committee, commission, or other state agency must be introduced no later than the twentieth day of any session. The sponsor of such legislation must request a fiscal note from the Office of Planning and Budget and the Department of Audits and Accounts by November 1 of the year preceding the annual convening of the General Assembly in which the bill is to be introduced, but subsequent to the preparation of such bill by the Office of Legislative Counsel. With respect to a member-elect of the General Assembly, such person must request a fiscal note from the Office of Planning and Budget and the Department of Audits and Accounts by December 1 of the year preceding the annual convening of the General Assembly in which the bill is to be introduced, but subsequent to the preparation of such bill by the Office of Legislative Counsel. The director of the Office of Planning and Budget and the state auditor shall prepare and submit the fiscal note not later than the day of convening of the General Assembly.

(2) The failure to request a fiscal note by November 1 as provided in paragraph (1) of this subsection shall preclude consideration of the measure by the Senate or the House of Representatives unless the committee to which a bill is assigned in the chamber in which it is introduced:

(A)(i) Determines that such bill will have a significant impact as described in paragraph (1) of this subsection;

(ii) Waives the applicable November 1 or December 1 deadline of paragraph (1) of this subsection;

(iii) Requests a fiscal note from the director of the Office of Planning and Budget and the state auditor, except as otherwise provided in subsection (e) of this Code section; and

(iv) Among fiscal notes so requested, the chairperson of such committee suggests a preferred order of completion to guide the director of the Office of Planning and Budget and the state auditor; or

(B) Determines that such bill will not have a significant impact as described in paragraph (1) of this subsection.

(3) Any such determination or waiver shall be by the affirmative vote of a majority of the members of the committee, on a specific motion for waiver, and shall allow consideration of the measure by both chambers so long as the bill has been introduced not later than the twentieth day of any session.

(4) Any general bill having a significant impact on the anticipated revenue or expenditure level of counties and municipalities must be introduced no later than the twentieth day of any session.

(5) This article shall not apply to any local bill affecting a county or municipality which must be advertised in accordance with the requirements of Code Section 28-1-14, relating to the advertisement of local legislation.

(b) In the event any bill having a significant impact as described in paragraph (1) of subsection (a) of this Code section is introduced after the twentieth day of any session, it shall not be considered or acted upon in any manner by either the Senate or the House of Representatives. The President of the Senate shall decide whether a bill which is introduced in the Senate falls within this category; and the Speaker of the House of Representatives shall decide whether a bill which is introduced in the House of Representatives falls within this category. The President of the Senate shall have the same right of decision on House bills which reach the Senate; and the Speaker of the House of Representatives shall have the same right of decision on Senate bills which reach the House of Representatives.

(c)(1) In the event a bill having a significant impact as described in paragraph (1) of subsection (a) of this Code section is introduced not later than the twentieth day of any session, the chairperson of the committee to which such bill is referred shall request the director of the Office of Planning and Budget and the state auditor to submit any such fiscal note as to the fiscal effect of any such bill and to file a copy of such fiscal note with the Senate Budget Office and the House Budget Office. The chairperson shall make such request after the bill is referred to the committee.

(2) The chairperson shall not be required to make such request with respect to any bill for which:

(A) A fiscal note has been requested by the sponsor of the bill pursuant to paragraph (1) of subsection (a) of this Code section and

the chairperson has been duly notified in writing of such request by such sponsor; or

(B) The director of the Office of Planning and Budget and the state auditor have previously submitted a fiscal note pursuant to a request under paragraph (1) of subsection (a) of this Code section.

(d) In the event a determination is made under subparagraph (a)(2)(B) of this Code section that a bill will not have a significant impact, if the director of the Office of Planning and Budget or the state auditor has information or knowledge that any bill will have a significant impact as described in paragraph (1) of subsection (a) of this Code section, a fiscal note may be prepared according to the criteria outlined in subsection (g) of this Code section. Such a fiscal note may be prepared without a request by the bill's author or the committees to which it is assigned in either chamber. Any fiscal note prepared according to this subsection shall be distributed consistent with Code Section 28-5-44.

(e) During any regular session of the General Assembly, the director of the Office of Planning and Budget and the state auditor shall prepare and submit the fiscal note within five days after receipt of the request or within ten days if the director of the Office of Planning and Budget and the state auditor have made a formal request for extension of time.

(f) The principal administrative and fiscal officers of all departments, boards, councils, committees, commissions, and other agencies of the state government and, when applicable, of counties, municipalities, and other political subdivisions are authorized and directed to cooperate fully with the director of the Office of Planning and Budget and the state auditor in providing any information and assistance necessary in the preparation of fiscal notes pursuant to this Code section.

(g)(1) The fiscal note required by this Code section shall include a reliable estimate in dollars of the anticipated change in revenue or expenditures under the provisions of the bill. It shall also include a statement as to the immediate effect and, if determinable or reasonably foreseeable, the long-range effect of the measure. If, after careful investigation, it is determined that no dollar estimate is possible, the fiscal note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given. In this event, the fiscal note shall contain an example based on a specific situation or reflecting the average group of persons possibly affected by the bill so as to provide an indication of the cost of such bill to the General Assembly. Assumptions used to develop these averages shall be noted in the fiscal note and the criteria included herein shall constitute a fiscal note. No comment or opinion regarding the merits of the measure for which the statement is prepared shall be included in the

fiscal note; however, technical or mechanical defects may be noted. The state auditor and the director of the Office of Planning and Budget shall jointly prepare their fiscal note; and, if there is a difference of opinion between such officials, it shall be noted in the fiscal note. In the event the director of the Office of Planning and Budget and the state auditor concur that the fiscal note on any such bill cannot be prepared within the five-day limitation in effect during any regular session of the General Assembly, they shall so inform the chairperson in writing and shall be allowed to submit said note not later than ten days after the request for it is made.

(2) For fiscal note requests for a bill having a significant impact on the anticipated revenue or expenditure level of the Department of Education which would create a new program or funding category, the fiscal note shall include a ten-year projection of the costs of such new program or funding category. (Ga. L. 1975, p. 1568, § 3; Ga. L. 1976, p. 533, § 1; Ga. L. 1978, p. 907, § 1; Ga. L. 1981, p. 1809, § 11; Ga. L. 1982, p. 1116, § 1; Ga. L. 1983, p. 3, § 54; Ga. L. 1985, p. 1331, §§ 2, 3; Ga. L. 1993, p. 1914, § 19; Ga. L. 1994, p. 97, § 28; Ga. L. 1994, p. 1633, § 1; Ga. L. 1999, p. 761, § 1; Ga. L. 2008, p. VO1, § 1-15/HB 529; Ga. L. 2012, p. 859, § 1/HB 1178.)

**The 2008 amendment**, effective January 28, 2008, substituted “Senate Budget Office and the House Budget Office” for “legislative budget analyst” at the end of the first sentence of paragraph (c)(1). See editor’s note.

**The 2012 amendment**, effective July 1, 2012, in subsection (g), designated the existing provisions as paragraph (g)(1), and added paragraph (g)(2).

**Editor’s notes.** — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

## ARTICLE 4

### CLAIMS ADVISORY BOARD

#### PART 1

#### GENERAL PROVISIONS

## 28-5-60. Creation; membership; representation of members by deputies or other designated employees.

(a) There is created the Claims Advisory Board, hereinafter called the board, to be composed of the Secretary of State, who shall be the chairman, the commissioner of human services, the commissioner of corrections, and the commissioner of transportation. Whenever the board takes any official action authorized under the law or duly

promulgated rules and regulations, three of the members shall constitute a quorum; however, any of those individuals named above may be represented by a deputy or other designated employee; and any such action shall be valid if any two of the remaining three individuals are present during such action.

(b) The Claims Advisory Board is assigned to the Secretary of State for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1963, p. 624, § 1; Ga. L. 1972, p. 1015, § 1805; Ga. L. 1979, p. 797, § 1; Ga. L. 1986, p. 155, § 1; Ga. L. 2009, p. 453, § 2-4/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human

resources” in the first sentence of subsection (a).

## JUDICIAL DECISIONS

**Construction with O.C.G.A. § 50-21-26.** — Because: (1) a patron’s personal injury claim filed with the claims advisory board (CAB) in no way complied with the ante litem requirements of the Georgia Tort Claims Act; (2) the patron’s claim to the CAB was made under a separate statutory scheme set up under Article 4 of Title 28 dealing with the financial affairs of the General Assembly, covered under O.C.G.A. § 28-5-60 et seq.;

and (3) prior to filing suit, no notice was given to the Risk Management Division of the Department of Administrative Services or the Department of Motor Vehicle Safety, to the extent that the trial court denied the motion of the state to dismiss the patron’s claim of \$5,000 or less, the court erred, but the order denying the patron’s claim of \$5,000 or more was upheld. *State of Ga. v. Haynes*, 285 Ga. App. 637, 647 S.E.2d 331 (2007).

## PART 2

### CLAIMS AGAINST STATE OR DEPARTMENTS OR AGENCIES

#### 28-5-80. Introduction of compensation resolutions; general requirements as to filing of notice of claim.

## JUDICIAL DECISIONS

**Cited in** *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga.*, No.

3:07-CV-084 (CDL), 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008).

#### 28-5-85. Payment of small claims by board.

## JUDICIAL DECISIONS

**Waiver of immunity.** — In a personal injury suit filed by a patron of the Department of Motor Vehicle Safety office, the appeals court disagreed that the state was estopped from claiming sovereign immunity, and that such immunity was waived

to the extent of \$5,000 by O.C.G.A. § 28-5-85(h), as that section only waived immunity regarding claims before the claims advisory board, and the patron’s claim there was denied by the trial court; further, the government may not waive or

be estopped from invoking statutory notice requirements. *State of Ga. v. Haynes*, 285 Ga. App. 637, 647 S.E.2d 331 (2007).

### PART 3

## COMPENSATION OF PERSONS FOR INJURIES SUSTAINED WHILE PREVENTING CRIME OR AIDING OFFICERS OF THE LAW

**Law reviews.** — For article, “The New Special Master Rule — Uniform Superior Court Rule 46: Life Jackets for the Courts

in the Perfect Storm,” see 15 (No. 4) Ga. St. B.J. 20 (2009).

### ARTICLE 5

## FAIR AND OPEN GRANTS

### 28-5-122. Publication of description of grant program by agency as prerequisite to making grants.

Before any state agency may make any grant of public funds or of funds otherwise within its power of disposition, the state agency must publish in print or electronically a description of the grant program in the Official Compilation of the Rules and Regulations of the State of Georgia and the Secretary of State shall make such descriptions available for convenient public inspection. The description must contain at least the following:

- (1) The name of the grant program;
- (2) The citation to the statutory basis for the grant program in the Official Code of Georgia Annotated or other general law of the State of Georgia;
- (3) The general scope and purpose of the grant program;
- (4) General terms and conditions of the grant;
- (5) Eligible recipients of the grant;
- (6) The criteria for the award of the grant; and
- (7) Directions and deadlines for applying for such grant. (Code 1981, § 28-5-122, enacted by Ga. L. 1993, p. 1914, § 20; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in the first sentence of the introductory paragraph.

## CHAPTER 9

### CODE REVISION COMMISSION

#### **28-9-2. Creation of the Code Revision Commission; membership, term of office, and vacancies; expenses and allowances; ratification of previous actions and contracts.**

#### **JUDICIAL DECISIONS**

**Code Revision Commission within legislative authority.** — Composition of Code Revision Commission did not violate separation of powers under the Constitution, as the work of the commission, com-

posed of ten legislators and five members of the state bar, was within the sphere of legislative authority. *Harrison Co. v. Code Revision Com.*, 244 Ga. 325, 260 S.E.2d 30 (1979).

#### **28-9-3. Powers and duties of commission generally.**

**Law reviews.** — For discussion of the work of the Code Revision Commission in

making the Code, see 18 Ga. St. B.J. 102 (1982).

#### **JUDICIAL DECISIONS**

**Substantive amendment in Code reviser bill unconstitutional.** — 1989 amendment to O.C.G.A. § 34-9-13(e), which greatly limited availability of workers' compensation benefits to surviving spouses but was enacted in Code reviser bill that had the object and title reflecting

a purpose of correcting only grammatical errors and to modernize language in various statutes, was a substantive alteration made in violation of Ga. Const. 1983, Art. III, Sec. V, Para. III. *Sherman Concrete Pipe Co. v. Chinn*, 283 Ga. 468, 660 S.E.2d 368 (2008).

#### **28-9-4. Commission staff.**

**Law reviews.** — For discussion of history, staffing, procedures, and duties of

the Office of Legislative Counsel, see 23 Ga. St. B.J. 114 (1987).

#### **28-9-5. Publication of Official Code of Georgia Annotated; authority to make corrections and editorial changes; authority to introduce legislation; effect of corrections and changes.**

#### **JUDICIAL DECISIONS**

**Substantive amendment in Code reviser bill unconstitutional.** — 1989 amendment to O.C.G.A. § 34-9-13(e), which greatly limited availability of workers' compensation benefits to surviving spouses but was enacted in Code reviser bill that had the object and title reflecting

a purpose of correcting only grammatical errors and to modernize language in various statutes, was a substantive alteration made in violation of Ga. Const. 1983, Art. III, Sec. V, Para. III. *Sherman Concrete Pipe Co. v. Chinn*, 283 Ga. 468, 660 S.E.2d 368 (2008).

## **CHAPTER 12**

### **2010 SPECIAL COUNCIL AND COMMITTEE ON TAX REFORM AND REVENUE**

Sec.

28-12-1 through 28-12-4 [Repealed].

#### **28-12-1 through 28-12-4.**

Repealed by Ga. L. 2010, p. 729, § 1/HB 1405, effective July 1, 2012.

**Editor's notes.** — This chapter consisted of Code Sections 28-12-1 through 28-12-4, relating to the 2010 Special Council and Committee on Tax Reform

and Revenue, and was based on Code 1981, §§ 28-12-1—28-12-4, enacted by Ga. L. 2010, p. 729, § 1/HB 1405.

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## **CHAPTER 13**

### **2011 SPECIAL COUNCIL AND COMMITTEE ON CRIMINAL JUSTICE REFORM**

Sec.

28-13-1 through 28-13-4 [Repealed].

#### **28-13-1 through 28-13-4.**

Repealed by Ga. L. 2011, p. 35, § 1/HB 265, effective July 1, 2012.

**Editor's notes.** — This chapter consisted of Code Sections 28-13-1 through 28-13-4, relating to the 2011 Special Council and Committee on Criminal Jus-

tice Reform, and was based on Code 1981, §§ 28-13-1—28-13-4, enacted by Ga. L. 2011, p. 35, § 1/HB 265.

# **TITLE 29**

## **GUARDIAN AND WARD**

Chap.

2. Guardians of Minors, 29-2-1 through 29-2-77.
3. Conservators of Minors, 29-3-1 through 29-3-120.
4. Guardians of Adults, 29-4-1 through 29-4-98.
5. Conservators of Adults, 29-5-1 through 29-5-140.
8. County Guardians, 29-8-1 through 29-8-5.
9. Court Proceedings, 29-9-1 through 29-9-19.
10. Public Guardians, 29-10-1 through 29-10-11.

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**Law reviews.** — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 61 Mercer L. Rev. 385 (2009).

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## **CHAPTER 2**

### **GUARDIANS OF MINORS**

#### **Article 1**

##### **Minors**

##### **PART 5**

###### **PERMANENT GUARDIANSHIP**

Sec.

29-2-16. Individuals with preference for permanent guardianship of minor; preference not controlling.

29-2-17. Petition for appointment of permanent guardian; requirements of petition; notice.

#### **Article 2**

##### **Protection of Minor**

29-2-22. Authority of guardian; ap-

Sec.

pointment of guardian ad litem.

#### **Article 4**

##### **Violations by Guardians**

29-2-40. Petition to resign guardianship; requirements; service; hearing; appointment of successor guardian.

29-2-41. Appointment of successor guardian.

#### **Article 5**

##### **Temporary Substitute Guardians**

29-2-51. Appointment of successor guardian; notice; preference to selected individuals; order of appointment.

## ARTICLE 1

## MINORS

## PART 2

## PARENTAL RIGHTS IN GUARDIAN SELECTION

**29-2-4. Nomination of testamentary guardian; no bond or security required.**

## JUDICIAL DECISIONS

## ANALYSIS

## GENERAL CONSIDERATION

**General Consideration**

**Guardians appointed by will remain in place.** — Probate court did not err in issuing letters of testamentary guardianship to the brother of a father's children because O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother without notice and a hearing and without consideration of the best interests of the children; both the mother and father nom-

inated the brother as the children's testamentary guardian in their respective wills, the brother consented to serve as the guardian, the wills were admitted in solemn form, no petition was filed to set aside the probate court order admitting their wills, and the probate court did not revoke the court's letters of testamentary guardianship to the brother. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

## PART 3

## TEMPORARY GUARDIANSHIP OF MINORS

**29-2-8. Termination of temporary guardianship; petition for termination of guardianship.**

## JUDICIAL DECISIONS

**Best interest standard requires clear and convincing evidence of harm to the child.** — Best interests of the child standard in O.C.G.A. § 29-2-8(b) required a guardian to prove by clear and convincing evidence that the child would suffer physical or emotional harm if custody were awarded to the biological parent

and that continuation of the guardianship would promote the child's welfare and happiness. With this narrowing construction, the best interest of the child standard in § 29-2-8(b) was constitutional. *Boddie v. Daniels*, 288 Ga. 143, 702 S.E.2d 172 (2010).

## PART 5

## PERMANENT GUARDIANSHIP

**29-2-16. Individuals with preference for permanent guardianship of minor; preference not controlling.**

(a) The court shall appoint as permanent guardian that individual who will serve the best interest of the minor, considering the following order of preferences:

- (1) The adult who is the preference of the minor if the minor is 14 years of age or older;
- (2) The nearest adult relative of the minor determined according to Code Section 53-2-1;
- (3) Other adult relatives of the minor;
- (4) Other adults who are related to the minor by marriage;
- (5) An adult who was designated in writing by either of the minor's natural guardians in a notarized document or document witnessed by two or more persons; or
- (6) An adult who has provided care or support for the minor or with whom the minor has lived.

(b) The court may disregard an individual who has preference and appoint an individual who has a lower preference or no preference. In determining what is in the best interest of the minor, the court may take into account any facts and circumstances presented to it, including the statement of a minor who is under 14 years of age. (Code 1981, § 29-2-16, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the Revised Probate Code of 1998" following "Section 53-2-1" at the end of paragraph (a)(2).

**29-2-17. Petition for appointment of permanent guardian; requirements of petition; notice.**

(a) Any interested person may file a petition for the appointment of a permanent guardian of a minor.

(b) The petition for appointment of a permanent guardian shall set forth:

- (1) A statement of the facts upon which the court's jurisdiction is based;

- (2) The name, address, and date of birth of the minor;
- (3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the minor, if any, and, if different from the petitioner, the name, address, and county of domicile of the individual nominated by the petitioner to serve as guardian and that individual's relationship to the minor, if any;
- (4) A statement that the minor has no natural guardian, testamentary guardian, or permanent guardian;
- (5) A statement of whether the child was born out of wedlock and, if so, the name and address of the biological father, if known;
- (6) Whether, to the petitioner's knowledge, there exists any notarized or witnessed document made by a parent of the minor that deals with the guardianship of the minor and the name and address of any designee named in the document;
- (7) In addition to the petitioner and the nominated guardian, the names and addresses of the following relatives of the minor whose whereabouts are known:
  - (A) The adult siblings of the minor; provided, however, that not more than three adult siblings need to be listed;
  - (B) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need to be listed; or
  - (C) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1;
- (8) Whether a temporary guardian has been appointed for the minor or a petition for the appointment of a temporary guardian has been filed or is being filed; and
- (9) The reason for any omission in the petition for appointment of a permanent guardian for a minor in the event full particulars are lacking.

(c) In addition to the notice required by Code Section 29-2-15, notice of the petition for appointment of a permanent guardian for a minor shall be given to any designee named in paragraph (6) of subsection (b) of this Code section and the individuals named in paragraph (7) of subsection (b) of this Code section. The notice shall be by personal service if the individual resides in this state at a known address; by first-class mail if the individual resides outside this state at a known address; or by publication for two weeks in the official county legal organ for the county in which the petition is filed if no address is known.

The notice shall state that the individual is entitled to object either to the establishment of a permanent guardianship or to the selection of the petitioner as permanent guardian, or both. The notice shall require that any objection be filed in writing with the court within ten days of the personal service, within 14 days of the mailing of the notice, or within ten days of the date of the second publication of the notice.

(d) If the judge deems it necessary, a temporary guardian may be appointed under the same rules that apply to the appointment of a temporary administrator. (Code 1981, § 29-2-17, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the Revised Probate Code of 1998” following “Section 53-2-1” at the end of subparagraph (b)(7)(C).

## ARTICLE 2

### PROTECTION OF MINOR

#### **29-2-22. Authority of guardian; appointment of guardian ad litem.**

(a) The appointment of a guardian shall vest in the guardian the exclusive power, without court order, to:

(1) Take custody of the person of the minor and establish the minor’s place of dwelling within this state;

(2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any consent or approval that may be necessary for medical or other professional care, counsel, treatment, or services for the minor;

(3) Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the minor in the name of or on behalf of the minor;

(4) Execute a surrender of rights to enable the adoption of the minor pursuant to the provisions of Article 1 of Chapter 8 of Title 19 or the adoption laws of any other state; and

(5) Exercise those other powers reasonably necessary to provide adequately for the support, care, education, health, and welfare of the minor.

(b) At the time of the appointment of the guardian or at any time thereafter, any of the following powers may be specifically granted by

the court to the guardian upon such notice, if any, as the court shall determine, provided that no disposition of the minor's property shall be made without the involvement of a conservator, if any:

- (1) To establish the minor's place of dwelling outside this state;
- (2) To change the jurisdiction of the guardianship to another county in this state that is the county of the minor's place of dwelling, pursuant to Code Section 29-2-60;
- (3) To change the domicile of the minor to the minor's or the guardian's place of dwelling, in the determination of which the court shall consider the tax ramifications and the succession and inheritance rights of the minor and other parties;
- (4) To consent to the marriage of the minor;
- (5) To receive reasonable compensation from the estate of the minor for services rendered to the minor; and
- (6) If there is no conservator, to disclaim or renounce any property or interest in property of the minor in accordance with the provisions of Code Section 53-1-20.

(c) Before granting any of the powers described in subsection (b) of this Code section, the court shall appoint a guardian ad litem for the minor and shall give notice to any natural guardian of the minor.

(d) In granting any of the powers described in subsection (b) of this Code section, the court shall consider the property rights of the minor and the views of the conservator, if available, or, if there is no conservator, of others who have custody of the minor's property.

(e) In performing any of the acts described in this Code section, the guardian shall act in coordination and cooperation with the conservator or, if there is no conservator, with others who have custody of the minor's property. (Code 1981, § 29-2-22, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2009, p. 800, § 5/HB 388; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2009 amendment**, effective July 1, 2009, inserted "Article 1 of" in the middle of paragraph (a)(4).

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the Revised Probate Code of 1998" following

"Section 53-1-20" at the end of paragraph (b)(6).

**Editor's notes.** — Ga. L. 2009, p. 800, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Option of Adoption Act.'"

## JUDICIAL DECISIONS

**Letters of testamentary guardianship.** — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject

matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and

O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing and without consideration of the children's best interests; equity afforded no valid basis for the superior court's exercise of jurisdiction because the aunt and uncle had an appropriate remedy in the probate court to challenge the testamentary guardianship: a petition for revocation or suspension of the brother's letters of testamentary

guardianship. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

**Guardian had not sought change of domicile.** — In a wrongful death action, a decedent's minor children remained domiciled in Georgia because the guardian had not applied to a probate court to change the children's domicile to Alabama as required by O.C.G.A. § 29-2-22(b). *D.R. v. Grant*, 770 F. Supp. 2d 1337 (M.D. Ga. 2011).

## 29-2-24. Oath required of guardian.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under former Civil Code 1895, § 2528, former Code 1873, § 1812, and former Code 1933, § 49-113 and § 113-1402 are included in the annotations for this Code section.

**Inventory as admission.** — Inventory required by law to be made and returned by an administrator is an admission, though not a conclusive one, of possession of such assets of an intestate as are therein described. *Ellis v. McWilliams*, 70 Ga. App. 195, 27 S.E.2d 886 (1943) (decided under former Code 1933, § 113-1402).

**Administrator may explain any mistake or error in the inventory**, or may show that the administrator's intestate had no title to the property inventoried. The administrator's inventory of assets as belonging to the administrator's intestate puts the burden on the adminis-

trator to show its incorrectness. *Ellis v. McWilliams*, 70 Ga. App. 195, 27 S.E.2d 886 (1943) (decided under former Code 1933, § 113-1402).

**Prima facie proof of ownership by estate.** — Inventory and appraisement, when properly filed and recorded in the office of the court of ordinary (now probate court), is *prima facie* proof as to the property owned by the deceased at the time of death, and an estimate of the value thereof. If not a true inventory and appraisal, the burden is upon the removed administrator to prove that it is not correct, and account to the ordinary (now probate judge) for the items which the administrator listed and submitted to the appraisers, and which the administrator verified as correct. *Ellis v. McWilliams*, 70 Ga. App. 195, 27 S.E.2d 886 (1943) (decided under former Code 1933, § 113-1402).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31 Am. Jur. 2d, Executors and Administrators, § 516 et seq.

**C.J.S.** — 33 C.J.S., Executors and Administrators, § 129 et seq.

**ALR.** — Renewal of copyright where author is dead, 19 ALR 295.

## 29-2-25. Bond requirements.

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, decisions under

former Civil Code 1895, § 2528, former Code 1873, § 1812, former Code 1933,

§ 49-113, and former Code 1933, § 113-1401 are included in the annotations for this Code section.

**Cited** in Holsenbeck v. Arnold, 75 Ga. App. 311, 43 S.E.2d 348 (1947).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31 Am. Jur. 2d, Executors and Administrators, § 521. 39 Am. Jur. 2d, Guardian and Ward, §§ 30, 31, 72, 171, 229.

**C.J.S.** — 33 C.J.S., Executors and Administrators, §§ 135, 136. 39 C.J.S., Guardian and Ward, §§ 10, 30, 31.

**ALR.** — Time as of which value of property is to be computed for purpose of inheritance, succession, or estate tax, 160 ALR 1059.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes, 62 ALR3d 1272.

## ARTICLE 3

### TERMINATION OF GUARDIANSHIP

#### 29-2-30. Circumstances when guardianship terminates; delivery of property.

### JUDICIAL DECISIONS

**Termination of testamentary guardianship.** — Superior court erred in granting an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing

and without consideration of the children's best interests; under O.C.G.A. § 29-2-30(a), termination of the brother's guardianship would not occur until the earliest of the following events: the minors reached age 18, the minors were adopted, the minors were emancipated, the minors died, or a court order terminating the guardianship was entered, and none of those conditions were met. Zinkhan v. Bruce, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

## ARTICLE 4

### VIOLATIONS BY GUARDIANS

#### 29-2-40. Petition to resign guardianship; requirements; service; hearing; appointment of successor guardian.

(a) A guardian or the duly authorized guardian, conservator, or attorney in fact of a guardian, acting on behalf of the guardian, may resign upon petition to the court, showing to the satisfaction of the court that:

(1) The guardian is unable to continue to serve due to age, illness, infirmity, or other good cause;

(2) Greater burdens have devolved upon the office of guardian than those that were originally contemplated or should have been contem-

plated when the guardian was qualified and the additional burdens work a hardship upon the guardian;

(3) Disagreement exists between the minor and the guardian or between the guardian and the conservator in respect of the guardian's care of the minor, which disagreement and conflict appear to be detrimental to the minor;

(4) The resignation of the guardian will result in or permit substantial financial benefit to the minor; or

(5) The resignation would not be disadvantageous to the minor.

(b) The petition for resignation shall include the name of a suitable person who is willing to accept the guardianship.

(c) Personal service of the petition for resignation shall be made upon the minor and a guardian ad litem appointed by the court for the minor. Service shall be made by first-class mail to the parents of the minor in the event of the resignation of a temporary guardian, to the conservator of the minor, if any, and, in the following order of preference, to the following relatives of the minor whose whereabouts are known and who must be persons other than the resigning guardian or the proposed successor guardian:

(1) The adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(2) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(3) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(d) If after such hearing as the court deems appropriate, the court is satisfied that the petition for the resignation of the guardian and the appointment of the successor guardian should be granted, the court shall enter an order appointing the successor guardian in accordance with the provisions of Code Section 29-2-51 and accept the resignation, subject to the resigning guardian turning over to the successor guardian or conservator all property of the minor held by the guardian. (Code 1981, § 29-2-40, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-2-1" at the end of paragraph (c)(3).

### 29-2-41. Appointment of successor guardian.

(a) In the event of the death of a guardian, and upon the petition of an interested person or upon the court's own motion, the court shall appoint a successor guardian. The court shall notify the minor and any guardian ad litem appointed for the minor by personal service. Notice shall be given by first-class mail to the conservator of the minor, if any, to the personal representative of the deceased guardian, if any, and, in the following order of preference, to the following relatives of the minor whose whereabouts are known and who must be persons other than the proposed successor guardian:

- (1) The adult siblings of the minor; provided, however, that not more than three adult siblings need be served;
- (2) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or
- (3) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(b) After such hearing as the court deems appropriate, the court shall enter an order appointing a successor guardian in accordance with the provisions of Code Section 29-2-51 requiring the personal representative of the deceased guardian to turn over to the successor guardian all property of the minor held by the guardian. (Code 1981, § 29-2-41, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-2-1" at the end of paragraph (a)(3).

### 29-2-42. Requirement of guardian to answer charges affecting obligations as guardian; revocation of guardianship; impact on other proceedings.

**Law reviews.** — For article on the problems and benefits of multiple fiduciaries in estate planning, see 33 Mercer L. Rev. 355 (1981). For survey article on

wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

### JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, annotations under former O.C.G.A. § 53-6-144 are included in the annotations for this Code section.

**Letters of testamentary guardianship.** — Superior court erred in granting

an aunt and uncle custody of minor children because the court lacked subject matter jurisdiction to consider the petition for custody since a probate court had exclusive jurisdiction to issue and revoke letters of testamentary guardianship, and

O.C.G.A. § 29-2-4(b) mandated the issuance of letters of testamentary guardianship to the brother of the children's father without notice and a hearing and without consideration of the children's best interests; equity afforded no valid basis for the superior court's exercise of jurisdiction because the aunt and uncle had an appropriate remedy in the probate court to challenge the testamentary guardianship: a petition for revocation or suspension of the brother's letters of testamentary guardianship. *Zinkhan v. Bruce*, 305 Ga. App. 510, 699 S.E.2d 833 (2010).

## 29-2-44. Statute of limitations.

**Law reviews.** — For article, "Some Problems in Providing for Nonjudicial Settlement of the Trustee's Accounts," see 3 Ga. St. B.J. 417 (1967). For article, "Fiduciary Problems of the Executor and

**Commission on extra compensation authorized.** — An administrator was entitled to a commission on a sum disbursed to the administrator as extra compensation. *Sams v. Leskanic*, 220 Ga. App. 202, 469 S.E.2d 703 (1996) (decided under former O.C.G.A. § 53-6-144).

**Commission on prior commission not authorized.** — An administrator was not entitled to the payment of a commission on a previously paid commission. *Sams v. Leskanic*, 220 Ga. App. 202, 469 S.E.2d 703 (1996) (decided under former O.C.G.A. § 53-6-144).

Trustee: Conflicts of Interest, Violations of Fiduciary Duties, Surcharge, and Other Remedies of Beneficiaries," see 9 Ga. St. B.J. 187 (1972).

## JUDICIAL DECISIONS

**Editor's notes.** — In light of the similarity of the provisions, annotations under former Civil Code 1910, § 3994, former Code 1933, § 113-1411 and Ga. L. 1943, p. 409, § 1 are included in the annotations for this Code section.

**Annual returns which do not substantially comply** with the law are not *prima facie* proof in favor of the administrator. If they are allowed by the ordinary (now probate judge) and recorded, under the terms of the statute, anyone challenging their correctness must carry the burden of proving their incorrectness. But when the returns are not allowed by the ordinary (now probate judge), the burden is upon the administrator to prove the returns' correctness in a proceeding in the court of ordinary (now probate court) for an accounting and settlement. *Ellis v. McWilliams*, 70 Ga. App. 195, 27 S.E.2d 886 (1943) (decided under Ga. L. 1943, p. 409, § 1).

**Mere failure to attach vouchers to returns**, standing alone, would not constitute a fraud upon the court of ordinary (now probate court). The total failure to file any returns at all would not, within itself, constitute fraud, nor afford a good reason for the interference of equity. While under the law it is the duty of an administrator to file annual returns accompanied by original vouchers, the duty is placed upon the ordinary (now probate court) to examine the returns to determine their correctness and interested parties are given 30 days in which to file objections to the returns. *Hoffman v. Chester*, 240 Ga. 296, 49 S.E.2d 760 (1948) (decided under former Code 1933, § 113-1411).

**Cited** in *Peavey v. Clemons*, 10 Ga. App. 507, 73 S.E. 756 (1912); *McMullen v. Carlton*, 192 Ga. 282, 14 S.E.2d 719 (1941).

## OPINIONS OF THE ATTORNEY GENERAL

**Editor's notes.** — In light of the similarity of the provisions, opinions under former O.C.G.A. § 53-7-180 are included in the annotations for this Code section.

**Filing originals or copies of vouchers.** — Banks, acting as guardians and administrators of estates, need not file originals or copies of vouchers with their

returns if the banks file an affidavit stating that the original vouchers have been compared to each item on the return and

that the return is correct. 1983 Op. Att'y Gen. No. U83-34 (decided under former O.C.G.A. § 53-7-180).

### RESEARCH REFERENCES

**Am. Jur. 2d.** — 31 Am. Jur. 2d, Executors and Administrators, §§ 516, 517, 960, 961, 966 et seq., 973.

**C.J.S.** — 34 C.J.S., Executors and Administrators, § 829.

## ARTICLE 5

### TEMPORARY SUBSTITUTE GUARDIANS

#### 29-2-51. Appointment of successor guardian; notice; preference to selected individuals; order of appointment.

(a) The court shall appoint a successor guardian upon the resignation, death, or revocation of the letters of the guardian if the appointment of a successor guardian is in the best interest of the minor. The court shall select the successor guardian in the manner provided in Code Section 29-2-15.

(b) In the event of the resignation or death of the guardian, notice of the proceeding for appointment of a successor guardian shall be given as provided in Code Sections 29-2-40 and 29-2-41. In all other cases, notice of the proceeding for appointment of a successor guardian shall be served personally on the minor and a guardian ad litem appointed for the minor. Notice shall be given by first-class mail to the conservator of the minor, if any, and, in the following order of preference, to the following relatives of the minor whose whereabouts are known and who must be persons other than the proposed successor guardian:

(1) The adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(2) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(3) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(c) After such hearing as the court deems appropriate, the court shall enter an order appointing the successor guardian. (Code 1981, § 29-2-51, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the

Revised Probate Code of 1998” following “Section 53-2-1” at the end of paragraph (b)(3).

## CHAPTER 3

### CONSERVATORS OF MINORS

#### Article 1

##### Property

Sec.

29-3-3. “Gross settlement” defined; compromise of claim; finality of settlement.

29-3-7. Preference among individuals for appointment of conservator; court’s ability to ignore preference for best interest of minor.

29-3-8. Petition for appointment of conservator for minor; requirements of petition; notice.

#### Article 2

##### Rights of Minor and Obligations of Conservator

29-3-22. Power of conservator; cooperation with guardian of minor.

#### Article 3

##### Property Obligations of Conservator

Sec.

29-3-32. Investment of funds.

#### Article 8

##### Successor Conservators

29-3-80. Required showing for resignation of conservator; name of suitable alternate required; notice; order appointing successor conservator.

29-3-81. Individuals entitled to notice; appointment of successor conservator; turning over of property.

#### Article 9

##### Temporary Substitute Conservators

29-3-91. Appointment of successor conservator; notice; hearing and bond requirements.

## ARTICLE 1

### PROPERTY

**29-3-1. “Personal property” defined; natural guardian must qualify as conservator; exception.**

**Law reviews.** — For survey article on wills, trusts, guardianships, and fiduciary

administration, see 60 Mercer L. Rev. 417 (2008).

**29-3-3. “Gross settlement” defined; compromise of claim; finality of settlement.**

(a) For purposes of this Code section, the term “gross settlement” means the present value of all amounts paid or to be paid in settlement of the claim, including cash, medical expenses, expenses of litigation,

attorney's fees, and any amounts paid to purchase an annuity or other similar financial arrangement.

(b) If the minor has a conservator, the only person who can compromise a minor's claim is the conservator.

(c) Whether or not legal action has been initiated, if the proposed gross settlement of a minor's claim is \$15,000.00 or less, the natural guardian of the minor may compromise the claim without becoming the conservator of the minor and without court approval. The natural guardian must qualify as the conservator of the minor in order to receive payment of the settlement if necessary to comply with Code Section 29-3-1.

(d) If no legal action has been initiated and the proposed gross settlement of a minor's claim is more than \$15,000.00, the settlement must be submitted for approval to the court.

(e) If legal action has been initiated and the proposed gross settlement of a minor's claim is more than \$15,000.00, the settlement must be submitted for approval to the court in which the action is pending. The natural guardian or conservator shall not be permitted to dismiss the action and present the settlement to the court for approval without the approval of the court in which the action is pending.

(f) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but the gross settlement reduced by:

(1) Attorney's fees, expenses of litigation, and medical expenses which shall be paid from the settlement proceeds; and

(2) The present value of amounts to be received by the minor after reaching the age of majority

is \$15,000.00 or less, the natural guardian may seek approval of the proposed settlement from the appropriate court without becoming the conservator of the minor. The natural guardian must qualify as the conservator of the minor in order to receive payment of the settlement if necessary to comply with Code Section 29-3-1.

(g) If the proposed gross settlement of a minor's claim is more than \$15,000.00, but such gross settlement reduced by:

(1) Attorney's fees, expenses of litigation, and medical expenses which shall be paid from the settlement proceeds; and

(2) The present value of amounts to be received by the minor after reaching the age of majority

is more than \$15,000.00, the natural guardian may not seek approval of the proposed settlement from the appropriate court without becoming the conservator of the minor.

(h) If an order of approval is obtained from the court, or a court in which the action is pending, based upon the best interest of the minor, the natural guardian or conservator shall be authorized to compromise any contested or doubtful claim in favor of the minor without receiving consideration for such compromise as a lump sum. Without limiting the foregoing, the compromise may be in exchange for an arrangement that defers receipt of part, not to exceed a total distribution of \$15,000.00 prior to a minor reaching the age of majority, or all of the consideration for the compromise until after the minor reaches the age of majority and may involve a structured settlement or creation of a trust on terms which the court approves.

(i) Any settlement entered consistent with the provisions of this Code section shall be final and binding upon all parties, including the minor. (Code 1981, § 29-3-3, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2006, p. 805, § 5/SB 534; Ga. L. 2008, p. 715, § 6/SB 508.)

**The 2008 amendment**, effective July 1, 2008, in subsection (h), in the first sentence, inserted “, or a court in which the action is pending,” and substituted “shall be authorized” for “is authorized”,

and, in the last sentence, inserted “, not to exceed a total distribution of \$15,000.00 prior to a minor reaching the age of majority,” in the middle.

## **29-3-7. Preference among individuals for appointment of conservator; court's ability to ignore preference for best interest of minor.**

(a) The court shall appoint as conservator that person who shall best serve the interest of the minor considering the following order of preferences:

- (1) The individual who is the preference of a minor who is 14 years of age or older;
- (2) The nearest adult relative of the minor as set forth in Code Section 53-2-1;
- (3) Other adult relatives of the minor;
- (4) Other adults who are related to the minor by marriage;
- (5) A person who was designated in writing by a minor's natural guardian in a notarized document or document witnessed by two or more persons;
- (6) A person who has provided care or support for the minor or with whom the minor has lived; or
- (7) The county guardian.

(b) The court may disregard an individual who has preference and appoint a person who has a lower preference or no preference. In

determining what is in the best interest of the minor, the court may take into account any facts and circumstances presented to it, including the statement of a minor who is under 14 years of age. (Code 1981, § 29-3-7, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the

Revised Probate Code of 1998” following “Section 53-2-1” at the end of paragraph (a)(2).

### **29-3-8. Petition for appointment of conservator for minor; requirements of petition; notice.**

(a) Any person may file a petition for the appointment of a conservator of a minor.

(b) The petition for appointment of a conservator shall set forth:

(1) A statement of the facts upon which the court’s jurisdiction is based;

(2) The name, address, and date of birth of the minor;

(3) The name, address, and county of domicile of the petitioner and the petitioner’s relationship to the minor, if any, and, if different from the petitioner, the name, address, and county of domicile of the person nominated by the petitioner to serve as conservator and that person’s relationship to the minor, if any;

(4) Whether to the petitioner’s knowledge there exists any notarized or witnessed document made by a parent of the minor that deals with the conservatorship of the minor and the name and address of any designee named in the document;

(5) In addition to the petitioner and the nominated conservator, the names and addresses of the following relatives of the minor whose whereabouts are known:

(A) Any parent of the minor whose parental rights have not been terminated;

(B) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need be listed;

(C) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be listed; or

(D) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1;

(6) A description of all known assets, income, other sources of funds, liabilities, and expenses of the minor;

(7) A disclosure of any financial interest that would cause the proposed conservator to have a conflict of interest with the minor;

(8) A specific listing of any of the additional powers, as described in subsections (b) and (c) of Code Section 29-3-22, that are requested by the conservator and a statement of the circumstances that would justify the granting of such powers; and

(9) The reason for any omission in the petition for appointment of conservator of a minor in the event full particulars are lacking.

(c) Notice of the petition for appointment of a conservator for a minor shall be given to any designee named in paragraph (4) of subsection (b) of this Code section and the individuals named in paragraph (5) of subsection (b) of this Code section. The notice shall be by personal service if the individual resides in this state at a known current address; by first-class mail if the individual resides outside this state at a known address; or by publication for two weeks in the official county legal organ for the county in which the petition is filed if no address is known. The notice shall state that the individual is entitled to object either to the establishment of a conservatorship or to the selection of the petitioner as conservator, or both. The notice shall require that any objection be filed in writing with the court within ten days of the personal service, within 14 days of the date of the mailing of the notice, or within ten days of the date of the second publication of the notice.

(d) If the judge deems it necessary, a temporary conservator may be appointed under the same rules that apply to the appointment of a temporary administrator as provided in Article 4 of Chapter 6 of Title 53. (Code 1981, § 29-3-8, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the

Revised Probate Code of 1998” following “Section 53-2-1” at the end of subparagraph (b)(5)(D).

## ARTICLE 2

### RIGHTS OF MINOR AND OBLIGATIONS OF CONSERVATOR

#### **29-3-21. Obligations of conservator; liability of conservator.**

**Law reviews.** — For survey article on wills, trusts, guardianships, and fiduciary

administration, see 60 Mercer L. Rev. 417 (2008).

**29-3-22. Power of conservator; cooperation with guardian of minor.**

(a) Without court order, the appointment of a conservator shall vest in the conservator the exclusive power to:

(1) Make reasonable disbursements from the annual income or, if applicable, from the annual budget amount that has been approved by the court pursuant to Code Section 29-3-30 for the support, care, education, health, and welfare of the minor;

(2) Enter into contracts for labor or services upon such terms as the conservator may deem best, but only to the extent that the annual compensation payable under such contracts when combined with other anticipated disbursements does not exceed the amount of the annual income or, if applicable, the annual budget amount which has been approved by the court pursuant to Code Section 29-3-30;

(3) Borrow money for one year or less and bind the minor or the minor's property, but only if the amount of the annual payments when combined with other anticipated disbursements does not exceed the amount of the annual income or, if applicable, the annual budget amount that has been approved by the court pursuant to Code Section 29-3-30 and only if done for purposes of paying the minor's debts, providing for the support, care, education, health, or welfare of the minor, or repairing the minor's dwelling place;

(4) Receive, collect, and hold the minor's property, additions to the minor's property, and all related records;

(5) Retain the property received by the conservator upon the creation of the conservatorship in accordance with the provisions of Code Section 29-3-31;

(6) Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the minor in the name of or on behalf of the minor;

(7) Fulfill, as far as possible, or, to the extent permitted by law, disaffirm the executory contracts and comply with the executed contracts of the minor;

(8) Examine the will and any other estate planning documents of the minor;

(9) Appoint an attorney in fact to act for the conservator when the conservator is unable to act; provided, however, that the conservator and the conservator's sureties shall be bound for the acts of the attorney as if the acts were the personal acts of the conservator;

- (10) Invest the minor's property pursuant to the provisions of Code Sections 29-3-32 and 29-3-33;
- (11) Sell the minor's stocks and bonds pursuant to the provisions of subsection (b) of Code Section 29-3-35;
- (12) Compromise any contested or doubtful claim for or against the minor if the proposed gross settlement as defined in Code Section 29-3-3 is in the amount of \$15,000.00 or less; and
- (13) Release the debtor and compromise all debts in the amount of \$15,000.00 or less when the collection of the debt is doubtful.

(b)(1) In the petition for appointment, or at any time during the conservatorship, the conservator may request the continuing power to:

- (A) Invest the minor's property in investments other than those authorized in Code Section 29-3-32, pursuant to the provisions of Code Section 29-3-34, without further court approval of any investment;
- (B) Sell, rent, lease, exchange, or otherwise dispose of any or all of the minor's real or personal property without complying with the provisions of Code Section 29-3-35, other than the provisions for additional bond set forth in subsection (e) of Code Section 29-3-35; or
- (C) Continue the operation of any farm or business in which the minor has an interest.

(2) Unless the request for the powers described in paragraph (1) of this subsection is made in the petition for the initial appointment of the conservator, the court shall order such hearing as the court deems appropriate. Notice shall be given by personal service to the minor and a guardian ad litem appointed for the minor. Notice shall be given by first-class mail to the guardian of the minor, if any; the surety on the conservator's bond; and to the following relatives of the minor whose whereabouts are known:

- (A) Any parent of the minor whose parental rights have not been terminated;
- (B) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need to be notified;
- (C) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need to be notified; or

(D) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined as set forth in Code Section 53-2-1.

(c) After appointment of a guardian ad litem for the minor and such hearing as the court deems appropriate, in granting the petition for appointment of conservator or at any time during the conservatorship, the court may grant the conservator any of the following powers on a case-by-case basis:

- (1) To make disbursements that exceed by no more than a specific amount the annual income or, if applicable, the annual budget amount which has been approved by the court pursuant to Code Section 29-3-30 for the support, care, education, health, and welfare of the minor;
- (2) To enter into contracts for labor or services for which the compensation payable under the contracts when combined with other disbursements from the estate exceeds the annual income or, if applicable, the annual budget amount which has been approved by the court pursuant to Code Section 29-3-30;
- (3) To make specific investments of the minor's property that do not comply with the provisions of Code Section 29-3-32, pursuant to the provisions of Code Section 29-3-34;
- (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the minor's real or personal property without complying with the provisions of Code Section 29-3-35 other than the provisions for additional bond set forth in subsection (e) of Code Section 29-3-35;
- (5) Pursuant to the provisions of Code Section 29-3-3, to compromise a contested or doubtful claim for or against the minor if the proposed gross settlement as defined in Code Section 29-3-3 is more than the amount of \$15,000.00;
- (6) To release the debtor and compromise a debt which is in the amount of more than \$15,000.00 when the collection of the debt is doubtful;
- (7) To establish or add property to a trust for the benefit of the minor; provided, however, that the trust must provide that the minor may revoke the trust at any time after reaching the age of majority and, unless otherwise provided by court order pursuant to Code Section 29-3-36, the trust shall terminate upon the minor's death and any property remaining in the trust shall be paid to the minor's estate;
- (8) To disclaim or renounce any property or interest in property of the minor in accordance with the provisions of Code Section 53-1-20;

(9) To engage in estate planning for the minor pursuant to the provisions of Code Section 29-3-36; and

(10) To perform such other acts as may be in the best interest of the minor.

(d) In granting any of the powers described in subsections (b) and (c) of this Code section, the court shall consider the views of the guardian, if available, or, if there is no guardian, of others who have custody of the minor.

(e) In performing any of the acts described in this Code section, the conservator shall endeavor to cooperate with the guardian or, if there is no guardian, with others who have custody of the minor. (Code 1981, § 29-3-22, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2006, p. 805, § 7/SB 534; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the Revised Probate Code of 1998” following “Section 53-2-1” at the end of subparagraph (b)(2)(D) and following “Section 53-1-20” at the end of paragraph (c)(8).

## ARTICLE 3

### PROPERTY OBLIGATIONS OF CONSERVATOR

#### 29-3-32. Investment of funds.

A conservator is authorized to invest estate funds in the following and shall not otherwise be liable for such investment, except in the case of gross neglect:

(1) Bonds issued by any county or municipality of this state which have been validated as required by law for the validation of county and municipal bonds;

(2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article 9 of Chapter 2 of Title 20 for the purpose of building and equipping schoolhouses, which bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter 82 of Title 36;

(3) Bonds and other securities issued by this state or by the Board of Regents of the University System of Georgia;

(4) Bonds or other obligations issued by the United States government and bonds of any corporation created by an act of Congress, the bonds of which are guaranteed by the United States government;

(5) Interest-bearing deposits in any financial institution located in this state, to the extent the deposits are insured by the Federal

Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or comparable insurance;

(6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of Chapter 3 of Title 8 or issued by any public housing authority or agency of the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, as authorized by Code Section 8-3-81;

(7) Bonds or other obligations issued by a housing authority in connection with a redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section 8-4-11;

(8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;

(9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of Chapter 7 of Title 31, as authorized by Code Section 31-7-27;

(10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section 32-10-30, as authorized by Code Section 32-10-45;

(11) Bonds or other obligations issued by a municipality or county pursuant to Chapter 61 of Title 36 or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds or other obligations are secured by an agreement between the issuer and the federal government in accordance with Code Section 36-61-13, as authorized by Code Section 36-61-13;

(12) Reserved.

(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections 2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq.;

(14) Real property loans:

(A) Which are not in default;

(B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;

(C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701, et seq.; and

(D) With respect to which loans, on or after default, pursuant to such insurance, debentures in at least the full amount of unpaid principal are issuable, which debentures are fully and unconditionally guaranteed both as to principal and interest by the United States; and

(15) Any other investments which are designated under the laws of this state as lawful or legal investments for guardians or conservators. (Code 1981, § 29-3-32, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2010, p. 579, § 14/SB 131; Ga. L. 2012, p. 775, § 29/HB 942.)

**The 2010 amendment**, effective July 1, 2010, deleted “, as authorized by Code Section 53-12-286” following “et seq.” at the end of paragraph (13) and deleted “, as authorized by Code Section 53-12-284” following “loans” at the end of the introductory paragraph of paragraph (14).

**The 2012 amendment**, effective May 1, 2012, part of an Act to revise, modern-

ize, and correct the Code, deleted and reserved paragraph (12), which read: “Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of Title 42, as authorized by Code Section 42-3-21.”

**Editor's notes.** — Article 2, Chapter 7, Title 31, referred to in paragraph (9), was repealed by Ga. L. 2008, p. 224, § 2.

## ARTICLE 5

### COMPENSATION OF CONSERVATORS

#### **29-3-50. Amount of compensation conservator owed; compensation to multiple conservators; failure to make annual returns results in forfeiture; renouncing of compensation.**

**Law reviews.** — For survey article on wills, trusts, guardianships, and fiduciary

administration, see 60 Mercer L. Rev. 417 (2008).

## ARTICLE 8

### SUCCESSOR CONSERVATORS

#### **29-3-80. Required showing for resignation of conservator; name of suitable alternate required; notice; order appointing successor conservator.**

(a) A conservator or the duly authorized guardian, conservator, or attorney in fact of a conservator acting on behalf of the conservator may resign upon petition to the court showing to the satisfaction of the court that:

- (1) The conservator is unable to continue serving due to age, illness, infirmity, or other good cause;
- (2) Greater burdens have devolved upon the office of conservator than those that were originally contemplated or should have been

contemplated when the conservator was qualified and the additional burdens work a hardship upon the conservator;

(3) Disagreement exists between the minor and the conservator or between the guardian and the conservator in respect to the conservator's management of the minor's property, which disagreement and conflict appear to be detrimental to the minor;

(4) The resignation of the conservator will result in or permit substantial financial benefit to the minor; or

(5) The resignation would not be disadvantageous to the minor.

(b) The petition for resignation shall include the name of a suitable person who is willing to accept the conservatorship.

(c) Personal service of the petition for resignation shall be made upon the minor and a guardian ad litem appointed by the court for the minor. Service shall be made by first-class mail to the guardian of the minor, if any, the surety on the conservator's bond, and to the following relatives of the minor who are persons other than the resigning conservator or the proposed successor conservator:

(1) Any parent of the minor whose parental rights have not been terminated;

(2) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(3) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(4) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(d) If, after such hearing as the court deems appropriate, the court is satisfied that the petition for the resignation of the conservator and the appointment of the successor conservator should be granted, the court shall enter an order appointing the successor conservator in accordance with the provisions of Code Section 29-3-91 and shall accept the conservator's resignation, subject to the resigning conservator turning over to the successor conservator all property of the minor held by the conservator. (Code 1981, § 29-3-80, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-2-1" at the end of paragraph (c)(4).

**29-3-81. Individuals entitled to notice; appointment of successor conservator; turning over of property.**

(a) In the event of the death of a conservator and upon the petition of an interested person or upon the court's own motion, the court shall appoint a successor conservator. The court shall notify the minor and a guardian ad litem appointed for the minor by personal service. Notice shall be given by first-class mail to the guardian of the minor, if any, the surety on the conservator's bond, the personal representative of the deceased conservator, if any, and, in the following order of preference, to the following relatives of the minor who are persons other than the proposed successor conservator:

- (1) Any parent of the minor whose parental rights have not been terminated;
- (2) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need be served;
- (3) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or
- (4) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(b) After such hearing as the court deems appropriate, the court shall enter an order appointing a successor conservator in accordance with the provisions of Code Section 29-3-91 and require the personal representative of the deceased conservator to turn over to the successor conservator all property of the minor held by the conservator. (Code 1981, § 29-3-81, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-2-1" at the end of paragraph (a)(4).

## ARTICLE 9

### TEMPORARY SUBSTITUTE CONSERVATORS

**29-3-91. Appointment of successor conservator; notice; hearing and bond requirements.**

(a) The court shall appoint a successor conservator upon the resignation, death, or revocation of the letters of the conservator if the appointment of a successor conservator is in the best interest of the

minor. The court shall select the successor conservator in the manner provided in Code Section 29-3-7.

(b) In the event of the resignation or death of the conservator, notice of the proceeding for appointment of a successor conservator shall be given as provided in Code Sections 29-3-80 and 29-3-81. In all other cases, notice of the proceeding for appointment of a successor conservator shall be served personally on the minor and a guardian ad litem appointed for the minor. Notice shall be given by first-class mail to the guardian of the minor, if any, and to the following relatives of the minor, in the following order of preference, who are persons other than the proposed successor conservator:

(1) Any parent of the minor whose parental rights have not been terminated;

(2) If there is no parent of the minor whose parental rights have not been terminated, the adult siblings of the minor; provided, however, that not more than three adult siblings need be served;

(3) If there is no adult sibling of the minor, the grandparents of the minor; provided, however, that not more than three grandparents need be served; or

(4) If there is no grandparent of the minor, any three of the nearest adult relatives of the minor determined according to Code Section 53-2-1.

(c) After any hearing the court deems appropriate, the court shall enter an order appointing the successor conservator and require that bond be posted in the amount set forth in Code Section 29-3-40. (Code 1981, § 29-3-91, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted “of the

Revised Probate Code of 1998” following “Section 53-2-1” at the end of paragraph (b)(4).

## CHAPTER 4

## GUARDIANS OF ADULTS

## Article 1

## General Provisions

Sec.

29-4-2. Qualifications of guardians selected for adults.

29-4-3. Order of preference in selection of guardians; written request nominating guardian; requirements of writing.

## Article 2

## Procedure for Appointment

29-4-18. Definitions; requirements; termination of temporary medical consent guardianship.

## Article 3

## Protection of the Ward

Sec.

29-4-23. Powers and rights of guardian; appointment of guardian ad litem; coordination and cooperation with conservator or others.

## Article 5

## Review and Termination of Guardianship

29-4-41. Modification of guardianship.

**Law reviews.** — For article, “The Olmstead Decision: The Road to Dignity and Freedom,” see 26 Ga. St. U. L. Rev. 651 (2010). For article, “Olmstead’s Promise and Cohousing’s Potential,” see 26 Ga. St. U. L. Rev. 663 (2010). For article, “From the Inside Out: Personal Perspectives of Six Georgians on Their Institutional Experiences,” see 26 Ga. St. U. L. Rev. 741 (2010). For article, “The Constitutional Right to Community Services,” see 26 Ga. St. U. L. Rev. 763 (2010). For article, “Reconsidering *Makin v. Hawaii*: The Right of Medicaid Beneficiaries to Home-Based Services as an Alternative to Institutionalization,” see 26 Ga. St. U. L. Rev. 803 (2010). “The Potential and Risks

of Relying on Title II’s Integration Mandate to Close Segregated Institutions,” see 26 Ga. St. U. L. Rev. 855 (2010). For article, “Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings,” see 26 Ga. St. U. L. Rev. 875 (2010). For article, “From Almshouses to Nursing Homes and Community Care: Lessons from Medicaid’s History,” see 26 Ga. St. U. L. Rev. 937 (2010).

For note, “Deinstitutionalization: Georgia’s Progress in Developing and Implementing an ‘Effectively Working Plan’ as Required by *Olmstead v. L.C. ex rel.*,” see 25 Ga. St. U. L. Rev. 699 (2009).

## ARTICLE 1

## GENERAL PROVISIONS

**29-4-1. Prerequisite findings prior to appointment of guardian for adult; extent of guardianship.**

## JUDICIAL DECISIONS

**Claimant suffering from Alzheimer’s Disease.** — Default would not be

entered against a claimant in a bankruptcy proceeding because there was some

evidence that the claimant might be suffering from Alzheimer's Disease, and a bankruptcy trustee needed to determine if a conservator or a guardian had been appointed for the claimant, pursuant to O.C.G.A. § 29-4-1 or O.C.G.A. § 29-5-1, in a state probate court before default could be entered. *Townson v. Loftin (In re Ford)*, No. R02-50780-PWB, 2009 Bankr. LEXIS 801 (Bankr. N.D. Ga. Mar. 3, 2009).

**Evidence sufficient to appoint guardian and conservator.** — Order granting sons' petition for guardianship and conservatorship of their mother pursuant to O.C.G.A. § 29-5-1(a).

suant to O.C.G.A. §§ 29-4-1 and 29-5-1(a) was proper because the evidence included, *inter alia*, the testimony of one of the sons as to his personal knowledge regarding his mother's physical problems, her refusal to either relocate or to hire a private care giver, and her failure to pay her bills; the evidence also included a social worker's evaluation which detailed the mother's erratic behavior and her refusal to pay her bills, which the trial court properly considered pursuant to O.C.G.A. § 29-5-12(d)(4). *In re Cash*, 298 Ga. App. 110, 679 S.E.2d 124 (2009).

## 29-4-2. Qualifications of guardians selected for adults.

(a) Only an individual may serve as guardian of an adult, except in the event a public guardian or the Department of Human Services is appointed pursuant to subsection (b.1) of Code Section 29-4-3.

(b) No individual may be appointed as guardian of an adult who:

(1) Is a minor, a ward, or a protected person;

(2) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest; or

(3) Is an owner, operator, or employee of a long-term care or other caregiving institution or facility at which the adult is receiving care, unless related to the adult by blood, marriage, or adoption.

(c) No entity may be appointed as guardian of an adult which:

(1) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest; or

(2) Is a long-term care or other caregiving institution or facility at which the adult is receiving care. (Code 1981, § 29-4-2, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 509, § 2/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted "Department of Hu-

man Services" for "Department of Human Resources" in subsection (a).

## 29-4-3. Order of preference in selection of guardians; written request nominating guardian; requirements of writing.

(a) The court shall appoint as guardian that individual who will best serve the interest of the adult, considering the order of preferences set

forth in this Code section. The court may disregard an individual who has preference and appoint an individual who has a lower preference or no preference; provided, however, that the court may disregard the preferences listed in paragraph (1) of subsection (b) of this Code section only upon good cause shown.

(b) Individuals who are eligible have preference in the following order:

- (1) The individual last nominated by the adult in accordance with the provisions of subsection (c) of this Code section;
- (2) The spouse of the adult or an individual nominated by the adult's spouse in accordance with the provisions of subsection (d) of this Code section;
- (3) An adult child of the adult or an individual nominated by an adult child of the adult in accordance with the provisions of subsection (d) of this Code section;
- (4) A parent of the adult or an individual nominated by a parent of the adult in accordance with the provisions of subsection (d) of this Code section;
- (5) A guardian appointed during the minority of the adult;
- (6) A guardian previously appointed in Georgia or another state;
- (7) A friend, relative, or any other individual;
- (8) Any other person, including a volunteer to the court, found suitable and appropriate who is willing to accept the appointment; and
- (9) The county guardian.

(b.1) If no other person is available to serve as guardian of the ward, the judge may appoint a public guardian in accordance with Chapter 10 of this title. In the event the court determines that there is no public guardian registered in accordance with Chapter 10 of this title appropriately available to serve as guardian for a ward, the court may appoint the Department of Human Services as guardian. If so appointed, the department shall designate a representative of the department to provide guardian services who shall take the oath of guardianship. If, after having been so appointed, the department presents to the court a public guardian registered in accordance with Chapter 10 of this title or some other person suitable and appropriate to serve as guardian of a ward and willing to so serve, the court shall allow the department to resign and shall appoint such public guardian or such other person. If the department is appointed pursuant to this subsection, it shall be bound by all the requirements of this chapter, except that it shall not be

required to post bond or pay any cost or fee of court associated with the guardianship proceeding. If the department is appointed pursuant to this subsection and enters into a contract with an independent contractor for the provision of guardianship services, the expense of providing such services may be paid for from state funds appropriated for public guardians under Chapter 10 of this title or, upon approval of the court, from the estate of the ward.

(c) At any time prior to the appointment of a guardian, an adult may nominate in writing an individual to serve as that adult's guardian should the adult be judicially determined to be in need of a guardian, and that nomination shall be given the preference described in this Code section, provided that it is signed in accordance with the provisions of subsection (e) of this Code section or the provisions of Code Section 31-32-5.

(d) At any time prior to the appointment of a guardian, a spouse, adult child, or parent of an adult may nominate in writing an individual to serve as that adult's guardian should the adult be judicially determined to be in need of a guardian, and that nomination shall be given the preference described in this Code section, provided that it is signed in accordance with the provisions of subsection (e) of this Code section or, if in a will, is executed in accordance with the provisions of Code Section 53-4-20.

(e) A writing nominating the guardian of an adult:

(1) Must contain an express nomination of the individual who shall serve as guardian and must be signed or acknowledged by the individual making the nomination in the presence of two witnesses who sign in the individual's presence; and

(2) May be revoked by the individual by obliteration, cancellation, or by a subsequent inconsistent writing, whether or not witnessed. (Code 1981, § 29-4-3, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 509, § 3/HB 394; Ga. L. 2007, p. 133, § 7/HB 24; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2009 amendment**, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the second sentence of subsection (b.1).

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-4-20" at the end of subsection (d).

**Law reviews.** — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007).

## ARTICLE 2

### PROCEDURE FOR APPOINTMENT

#### 29-4-14. Petition for appointment of emergency guardian; requirements of petition.

#### JUDICIAL DECISIONS

Cited in *Luther v. Luther*, 289 Ga. App. 428, 657 S.E.2d 574 (2008).

#### 29-4-18. Definitions; requirements; termination of temporary medical consent guardianship.

(a) As used in this Code section, the term:

(1) "Adult unable to consent" means a person 18 years of age or older who has been determined in his or her medical records by a licensed physician after the physician has personally examined the adult that he or she lacks sufficient understanding or capacity to make significant responsible decisions regarding his or her medical treatment or the ability to communicate by any means such decisions.

(2) "Life-sustaining procedures" means medications, machines, or other medical procedures or interventions which, when applied to a medical consent ward in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep such medical consent ward alive but cannot cure the medical consent ward and where, in the judgment of the medical consent ward's primary treating physician and a second physician, death will occur without such procedures or interventions.

(3) "Medical consent ward" means a ward for whom the court has appointed a temporary medical consent guardian pursuant to this Code section for a limited time and only for the purposes of consenting to surgical or medical treatment or procedures not prohibited by law.

(4) "Proposed medical consent ward" means an adult unable to consent who is or has been a patient in a health care institution or of a health care provider.

(5) "State of permanent unconsciousness" means an incurable or irreversible condition in which the medical consent ward is not aware of himself or herself or his or her environment and in which such medical consent ward is showing no behavioral response to his or her environment.

(6) "Temporary medical consent guardian" means an individual appointed pursuant to the provisions of this Code section for a limited

time and only for the purposes of consenting to surgical or medical treatment or procedures not prohibited by law.

(7) "Terminal condition" means an incurable or irreversible condition which would result in the medical consent ward's death in a relatively short period of time.

(b) In the absence, after reasonable inquiry, of a person authorized or willing to consent for the proposed medical consent ward under the provisions of Code Section 31-9-2, any interested person, including the proposed medical consent ward, may file a petition for the appointment of a temporary medical consent guardian. The petition shall be filed in the court of the county in which the proposed medical consent ward is domiciled or is found.

(c) The petition for appointment of a temporary medical consent guardian shall set forth:

(1) A statement of the facts upon which the court's jurisdiction is based;

(2) The name, address, and county of domicile of the proposed medical consent ward, if known;

(3) The name, address, and county of domicile of the petitioner and the petitioner's relationship to the proposed medical consent ward;

(4) A statement of the reasons the temporary medical consent guardian is sought, including:

(A) Facts that support the need for such guardian including facts that establish what medical decisions are needed and why those decisions are needed without undue delay;

(B) Facts that support the determination that the proposed medical consent ward lacks sufficient capacity to make or communicate medical treatment decisions; and

(C) The anticipated duration of the temporary medical consent guardianship;

(5) The fact that no other person appears to have authority and willingness to act in the circumstances, whether under a power of attorney, trust, or otherwise;

(6) The reason for any omission in the petition for an appointment of a temporary medical consent guardian in the event full particulars are lacking; and

(7) Whether a petition for the appointment of a guardian or conservator has been filed or is being filed in conjunction with the petition for the appointment of the temporary medical consent guardian.

(d) Upon the filing of a petition for a temporary medical consent guardian, the court shall review the petition to determine whether there is probable cause to believe that the proposed medical consent ward lacks decision-making capacity and is in need of a temporary medical consent guardian and either:

(1) Dismiss the petition and provide the proposed medical consent ward with the order dismissing the petition; or

(2) If the court determines that there is probable cause to believe that the proposed medical consent ward is in need of a temporary medical consent guardian, immediately:

(A) Appoint legal counsel to represent the proposed medical consent ward, which counsel may be the same counsel who is appointed to represent such adult in the hearing on the petition for guardianship, if any such petition has been filed, and the court shall inform counsel of the appointment;

(B) Order a preliminary hearing to be conducted within 72 hours after the filing of the petition; and

(C) Notify any proposed medical consent ward of any proceedings by service of all pleadings on such proposed medical consent ward, which notice shall be served personally on the proposed medical consent ward by a person specially appointed by the court for such purpose and shall not be served by mail, and such notice shall inform the proposed medical consent ward:

(i) That he or she has the right to attend any hearing that is held in connection with the petition to appoint a temporary medical consent guardian;

(ii) That he or she may lose important rights to control the management of his or her person if a temporary medical consent guardian is appointed;

(iii) That legal counsel has been appointed on his or her behalf; and

(iv) The date and time of the preliminary hearing on the petition to appoint a temporary medical consent guardian.

(e) Unless waived by the court, notice of the petition and the preliminary hearing shall also be served on the following persons who have not joined in the petition or otherwise consented to the proceedings:

(1) The administrator of the hospital or other health care facility where the proposed medical consent ward is located;

(2) The primary treating physician and other physicians believed to have provided any medical opinion or advice about any condition of the proposed medical consent ward relevant to the petition;

(3) All other persons the petitioner believes may have information concerning the expressed wishes of the proposed medical consent ward; and

(4) Any other persons as the court may direct.

(f) At the preliminary hearing, the court, in its discretion, shall:

(1) Appoint a temporary medical consent guardian;

(2) Order an evidentiary hearing to be conducted not later than four days after the preliminary hearing; or

(3) Dismiss the petition and provide the proposed medical consent ward with the order dismissing the petition.

(g) If the court orders an evidentiary hearing, in addition to any other evidence presented to the court, the court may consider any case review by the hospital's or health care facility's ethics committee or subcommittee thereof or by any other ethics mechanism selected by the hospital or health care facility.

(h) If the court holds an evidentiary hearing, the court, in its discretion, shall either:

(1) Appoint a temporary medical consent guardian; or

(2) Dismiss the petition and provide the proposed medical consent ward with the order dismissing the petition.

(i) The court shall have the authority to appoint as a temporary medical consent guardian any individual the court deems fit with consideration given to any applicable conflict of interest issue so as long as such individual is: (1) willing and able to become involved in the proposed medical consent ward's health care decisions and (2) willing to exercise reasonable care, diligence, and prudence and to consent in good faith to medical or surgical treatment or procedures which the proposed medical consent ward would have wanted had he or she not been incapacitated. Where the proposed medical consent ward's preferences are not known, the temporary medical consent guardian shall agree to act in the proposed medical consent ward's best interests. However, a temporary medical consent guardian shall not be authorized to withdraw life-sustaining procedures unless specifically authorized by the court pursuant to this Code section.

(j) The temporary medical consent guardianship shall terminate on the earliest of:

- (1) The court's removal of the temporary medical consent guardian;
- (2) The effective date of the appointment of a permanent guardian under Code Section 29-4-2;
- (3) The duration of the current hospitalization of the medical consent ward or a substantially continuous stay in another health care facility; or
- (4) Sixty days from the date of appointment of the temporary medical consent guardian.

(k)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by a temporary medical consent guardian, even if death or injury to the medical consent ward ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any direction or decision by a temporary medical consent guardian shall be protected and released to the same extent as though such person had interacted directly with the medical consent ward as a fully competent person.

(2) No temporary medical consent guardian who, in good faith, acts with due care for the benefit of the medical consent ward, or who fails to act, shall be subject to civil or criminal liability for such action or inaction.

(3) Any person who acts in good faith in accordance with a Physician Order for Life-sustaining Treatment developed pursuant to subsection (1) of this Code section shall have all of the immunity granted pursuant to Code Section 31-32-10.

(l) The Department of Public Health shall develop and make available a Physician Order for Life-sustaining Treatment, a specific form voluntarily executed by a patient and his or her authorized representative and a physician which provides directions regarding end of life care. (Code 1981, § 29-4-18, enacted by Ga. L. 2010, p. 852, § 2/SB 367; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 83, § 2/HB 247.)

**Effective date.** — This Code section became effective June 3, 2010.

**The 2011 amendment**, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" at the beginning of subsection (l).

**The 2012 amendment**, effective July 1, 2012, added paragraph (k)(3).

**Cross references.** — Persons authorized to consent to surgical or medical treatment, § 31-9-2. Health records, T. 31, C. 33.

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

## ARTICLE 3

### PROTECTION OF THE WARD

#### **29-4-20. Rights of the ward; impact on voting and testamentary capacity.**

##### **JUDICIAL DECISIONS**

**Father had right to visitation with child over guardian's objection.** — Although a disabled adult child's mother as guardian had authority to exercise the powers reasonably necessary to provide for the child's health and welfare, O.C.G.A. § 29-4-23(a)(4), the child had the right to communicate freely with persons other than the guardian, pursuant to

O.C.G.A. § 29-4-20(a)(4). In the absence of any medical or other direct testimony that visitation would have a negative impact on the child, the child's father had the right to visitation with his daughter over the mother's objection. *Mitchum v. Manning*, 304 Ga. App. 842, 698 S.E.2d 360 (2010).

#### **29-4-23. Powers and rights of guardian; appointment of guardian ad litem; coordination and cooperation with conservator or others.**

(a) Unless inconsistent with the terms of any court order relating to the guardianship, a guardian may:

- (1) Take custody of the person of the ward and establish the ward's place of dwelling within this state;
- (2) Subject to Chapters 9, 20, and 36 of Title 31 and any other pertinent law, give any consents or approvals that may be necessary for medical or other professional care, counsel, treatment, or service for the ward;
- (3) Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the ward in the name of or on behalf of the ward; and
- (4) Exercise those other powers reasonably necessary to provide adequately for the support, care, education, health, and welfare of the ward.

(b) At the time of the appointment of the guardian or at any time thereafter, any of the following powers may be specifically granted by the court to the guardian upon such notice, if any, as the court shall determine, provided that no disposition of the ward's property shall be made without the involvement of a conservator, if any:

- (1) To establish the ward's place of dwelling outside this state;

(2) To change the jurisdiction of the guardianship to another county in this state that is the county of the ward's place of dwelling, pursuant to Code Section 29-4-80;

(3) To change the domicile of the ward to the ward's or the guardian's place of dwelling, in the determination of which the court shall consider the tax ramifications and succession and inheritance rights of the ward and other parties;

(4) To bring an action for the divorce of the ward based on any of the grounds listed in Code Section 19-5-3, except on the ground that the marriage is irretrievably broken;

(5) To consent to the adoption of the ward;

(6) To receive reasonable compensation from the estate of the ward for services rendered to the ward; and

(7) If there is no conservator, to disclaim or renounce any property or interest in property of the ward in accordance with the provisions of Code Section 53-1-20.

(c) Before granting any of the powers described in subsection (b) of this Code section, the court shall appoint a guardian ad litem for the ward.

(d) In granting any of the powers described in subsection (b) of this Code section, the court shall consider the property rights of the ward and the views of the conservator, if any, or, if there is no conservator, of others who have custody of the ward's property.

(e) In performing any of the acts described in this Code section, the guardian shall act in coordination and cooperation with the conservator or, if there is no conservator, with others who have custody of the ward's property. (Code 1981, § 29-4-23, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following Section "53-1-20" at the end of paragraph (b)(7).

## JUDICIAL DECISIONS

**Father had right to visitation with child over guardian's objection.** — Although a disabled adult child's mother as guardian had authority to exercise the powers reasonably necessary to provide for the child's health and welfare, O.C.G.A. § 29-4-23(a)(4), the child had the right to communicate freely with persons other than the guardian, pursuant to

O.C.G.A. § 29-4-20(a)(4). In the absence of any medical or other direct testimony that visitation would have a negative impact on the child, the child's father had the right to visitation with his daughter over the mother's objection. *Mitchum v. Manning*, 304 Ga. App. 842, 698 S.E.2d 360 (2010).

**ARTICLE 5**  
**REVIEW AND TERMINATION OF GUARDIANSHIP**

**29-4-41. Modification of guardianship.**

(a) Upon the petition of any interested person, including the ward, or upon the court's own motion, the court may modify the guardianship by adjusting the duties or powers of the guardian, as defined in Code Sections 29-4-22 and 29-4-23, or the powers of the ward, as defined in Code Sections 29-4-20 and 29-4-21, or by making other appropriate adjustments to reflect the extent of the current capacity of the ward or other circumstances of the guardianship. Except for good cause shown, the court shall order that notice of the petition be given, in whatever form the court deems appropriate, to the ward, the guardian, the ward's legal counsel, and the ward's conservator, if any. In any proceeding under this Code section that would expand or increase the powers of the guardian or further restrict the rights of the ward, the court shall appoint legal counsel for the ward. In all other cases, the court, in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.

(b) If the petition for modification alleges a significant change in the capacity of the ward, it must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, a psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-4-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with notice as the court deems appropriate.

(c) If the petition for modification does not allege a significant change in the capacity of the ward, the court in its discretion may modify the guardianship upon a showing that the modification is in the ward's best interest; provided, however, that the court may order compliance with any of the provisions of subsection (b) of this Code section prior to granting the petition for modification.

(d) In any proceeding under this Code section that would expand or increase the powers of the guardian or further restrict the powers of the ward, the burden is on the petitioner to show by clear and convincing

evidence that the modification is in the ward's best interest. In any proceeding under this Code section that would restrict the powers of the guardian or restore powers to the ward, the burden is on the petitioner to show by a preponderance of the evidence that the modification is in the ward's best interest.

(e) No petition for modification shall be allowed by the court within two years after the denial or dismissal on the merits of a petition for substantially the same modification unless the petitioner shows a significant change in the condition or circumstances of the ward. (Code 1981, § 29-4-41, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 551, § 1/SB 134.)

**The 2011 amendment**, effective May 12, 2011, in the first sentence of subsection (a), substituted "Code Sections 29-4-22 and 29-4-23" for "Code Sections

29-4-14 and 29-4-15" and substituted "Code Sections 29-4-20 and 29-4-21" for "Code Section 29-4-13".

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## CHAPTER 5

### CONSERVATORS OF ADULTS

#### Article 1

##### Conservators

Sec.

29-5-3. Order of preference in selecting conservator; nomination of individual to serve as conservator; requirements of nomination.

#### Article 4

##### Protection of Property Interests

Sec.

29-5-32. Investment of estate funds by conservator.

#### Article 8

##### Modification and Termination of Conservatorship

29-5-71. Modification of conservatorship; contents of petition for modification; burden of proof.

#### Article 3

##### Rights and Responsibilities of Ward

29-5-23. Authority of conservator; cooperation with guardian or other interested parties.

**ARTICLE 1**  
**CONSERVATORS**

**29-5-1. Conservator for adults; best interest of the adult; no presumption of need for conservator; objective of conservatorship.**

**JUDICIAL DECISIONS**

**Claimant suffering from Alzheimer's Disease.** — Default would not be entered against a claimant in a bankruptcy proceeding because there was some evidence that the claimant might be suffering from Alzheimer's Disease, and a bankruptcy trustee needed to determine if a conservator or a guardian had been appointed for the claimant, pursuant to O.C.G.A. § 29-4-1 or O.C.G.A. § 29-5-1, in a state probate court before default could be entered. *Townson v. Loftin (In re Ford)*, No. R02-50780-PWB, 2009 Bankr. LEXIS 801 (Bankr. N.D. Ga. Mar. 3, 2009).

**Evidence sufficient to appoint guardian and conservator.** — Order granting sons' petition for guardianship and conservatorship of their mother pursuant to O.C.G.A. §§ 29-4-1 and 29-5-1(a) was proper because the evidence included, *inter alia*, the testimony of one of the sons as to his personal knowledge regarding his mother's physical problems, her refusal to either relocate or to hire a private care giver, and her failure to pay her bills; the evidence also included a social worker's evaluation which detailed the mother's erratic behavior and her refusal to pay her bills, which the trial court properly considered pursuant to O.C.G.A. § 29-5-12(d)(4). *In re Cash*, 298 Ga. App. 110, 679 S.E.2d 124 (2009).

**Appointment of county conservator upheld.** — Seeking to avoid the recovery

of Medicaid payments from their mother's estate, when the daughters opted their mother out of Medicaid and planned to sell some of the mother's property, those decisions were properly held to not be in the mother's best interest and supported the appointment of the county conservator in said capacity. *Cruver v. Mitchell*, 289 Ga. App. 145, 656 S.E.2d 269 (2008).

**Appointment of conservator proper.** — Trial court did not err in granting a petition for the appointment of a conservator to manage a ward's property and financial affairs because the Department of Human Services carried the Department's burden of proving under O.C.G.A. § 29-5-1(a) that the ward lacked sufficient capacity to make or communicate significant responsible decisions concerning the management of the ward's property and financial affairs; pursuant to O.C.G.A. § 29-5-12(d)(4), the evidence was sufficient for the probate court to find by clear and convincing evidence that the ward was in need of a conservator to protect the ward's assets because the ward suffered from cognitive loss that affected the ward's judgment with respect to financial affairs, and the ward's impaired judgment led the ward to incur significant financial losses as the ward repeatedly fell victim to fraud. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

**29-5-3. Order of preference in selecting conservator; nomination of individual to serve as conservator; requirements of nomination.**

(a) The court shall appoint as conservator that person who shall best serve the interest of the adult taking into consideration the order of preferences set forth in this Code section. The court may disregard a

person who has preference and appoint a person who has a lower preference or no preference; provided, however, that the court may disregard the preferences listed in paragraph (1) of subsection (b) of this Code section only upon good cause shown.

(b) Persons who are eligible and not disqualified have preference in the following order:

- (1) The person last nominated by the adult in accordance with the provisions of subsection (c) of this Code section;
- (2) The spouse of the adult or a person nominated by the adult's spouse in accordance with the provisions of subsection (d) of this Code section;
- (3) An adult child of the adult or a person nominated by an adult child of the adult in accordance with the provisions of subsection (d) of this Code section;
- (4) A parent of the adult or a person nominated by a parent of the adult in accordance with the provisions of subsection (c) of this Code section;
- (5) A conservator appointed during the minority of the adult;
- (6) A conservator previously appointed in Georgia or another state;
- (7) A friend, relative, or any other person; or
- (8) The county guardian.

(c) At any time prior to the appointment of a conservator, an adult may nominate in writing a person to serve as that adult's conservator should the adult be judicially determined to be in need of a conservator, and that nomination shall be given the preference set forth in this Code section, provided that it is signed in accordance with the provisions of subsection (e) of this Code section or the provisions of Code Section 31-36-5.

(d) At any time prior to the appointment of a conservator, a spouse, adult child, or parent of an adult may nominate in writing a person to serve as the adult's conservator should the adult be judicially determined to be in need of a conservator, and that nomination shall be given the preference described in this Code section, provided that it is signed in accordance with the provisions of subsection (e) of this Code section or, if in a will, is executed in accordance with the provisions of Code Section 53-4-20.

(e) A writing nominating the conservator of an adult:

- (1) Must contain an express nomination of the person who shall serve as conservator and must be signed or acknowledged by the

individual making the nomination in the presence of two witnesses who sign in the individual's presence; and

(2) May be revoked by the individual by obliteration, cancellation, or by a subsequent inconsistent writing, whether or not witnessed. (Code 1981, § 29-5-3, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2006, p. 805, § 12/SB 534; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Section 53-4-20" at the end of subsection (d).

## JUDICIAL DECISIONS

**Denial of appointment of guardian held erroneous.** — Because the probate court applied an incorrect analysis regarding the daughters' request for guardianship in an action involving their mother, the request was improperly denied. *Cruver v. Mitchell*, 289 Ga. App. 145, 656 S.E.2d 269 (2008).

**Appointment of county conservator upheld.** — Seeking to avoid the recovery

of Medicaid payments from their mother's estate, when the daughters opted their mother out of Medicaid and planned to sell some of the mother's property, those decisions were properly held to not be in the mother's best interest and supported the appointment of the county conservator in said capacity. *Cruver v. Mitchell*, 289 Ga. App. 145, 656 S.E.2d 269 (2008).

## ARTICLE 2

### PETITION FOR APPOINTED CONSERVATOR

#### 29-5-10. Petition for appointment of conservator; requirements of petition.

## JUDICIAL DECISIONS

**Motion to strike affidavit properly denied.** — Trial court did not err in denying a ward's petition to strike the affidavit of a psychologist that accompanied a petition for the appointment of a conservator to manage the ward's property and financial affairs because the affidavit satisfied the requirements of O.C.G.A. § 29-5-10(c); the affidavit included the specific determination, required by O.C.G.A. § 29-5-10(c)(2), that the ward lacked sufficient capacity to make or communicate significant, responsible decisions concerning the management of the ward's property, and statements supporting that determination. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

Trial court did not err in denying a ward's petition to strike the affidavit of a psychologist that accompanied a petition for the appointment of a conservator to manage the ward's property and financial affairs because although the ward did not agree to the appointment of a conservator, the Department of Human Services nevertheless was authorized to petition for the appointment under O.C.G.A. § 30-5-5(e); because the Department was authorized to petition for a conservatorship, and inasmuch as O.C.G.A. § 29-5-10(c) contemplated that such a petition be supported by the affidavit of a professional, such as a licensed psychologist, the Department did not act without any authority when the Depart-

ment obtained an affidavit from the psychologist. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

### 29-5-11. Prerequisite finding prior to appointment of conservator; notice; evaluation; written report.

#### JUDICIAL DECISIONS

**Probable cause.** — Because the evidence was sufficient to sustain the order of conservatorship, the court of appeals would not separately consider whether the probate court properly found probable cause to proceed with an evaluation and then conduct a hearing for purposes of

O.C.G.A. §§ 29-5-11 and 29-5-12; there is no reason to distinguish a finding of probable cause under § 29-5-11 from a finding of probable cause under § 29-5-12. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

### 29-5-12. Judicial review and proceedings.

#### JUDICIAL DECISIONS

**Probable cause.** — Because the evidence was sufficient to sustain the order of conservatorship, the court of appeals would not separately consider whether the probate court properly found probable cause to proceed with an evaluation and then conduct a hearing for purposes of O.C.G.A. §§ 29-5-11 and 29-5-12; there is no reason to distinguish a finding of probable cause under § 29-5-11 from a finding of probable cause under § 29-5-12. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

**Social worker's evaluation properly considered.** — Order granting sons' petition for guardianship and conservatorship of their mother pursuant to O.C.G.A. §§ 29-4-1 and 29-5-1(a) was proper because the evidence included, *inter alia*, the testimony of one of the sons as to his personal knowledge regarding his mother's physical problems, her refusal to either relocate or to hire a private care giver, and her failure to pay her bills; the evidence also included a social worker's evaluation which detailed the mother's erratic behavior and her refusal to pay her bills, which the trial court properly con-

sidered pursuant to O.C.G.A. § 29-5-12(d)(4). *In re Cash*, 298 Ga. App. 110, 679 S.E.2d 124 (2009).

**Appointment of conservator proper.** — Trial court did not err in granting a petition for the appointment of a conservator to manage a ward's property and financial affairs because the Department of Human Services carried the Department's burden of proving under O.C.G.A. § 29-5-1(a) that the ward lacked sufficient capacity to make or communicate significant responsible decisions concerning the management of the ward's property and financial affairs; pursuant to O.C.G.A. § 29-5-12(d)(4), the evidence was sufficient for the probate court to find by clear and convincing evidence that the ward was in need of a conservator to protect the ward's assets because the ward suffered from cognitive loss that affected the ward's judgment with respect to financial affairs, and the ward's impaired judgment led the ward to incur significant financial losses as the ward repeatedly fell victim to fraud. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

## ARTICLE 3

## RIGHTS AND RESPONSIBILITIES OF WARD

**29-5-21. Rights and powers removed from ward.**

**Law reviews.** — For survey article on administration, see 60 Mercer L. Rev. 417 wills, trusts, guardianships, and fiduciary (2008).

**29-5-23. Authority of conservator; cooperation with guardian or other interested parties.**

(a) Unless inconsistent with the terms of any court order relating to the conservatorship, a conservator without court order may:

- (1) Make reasonable disbursements from the annual income or, if applicable, from the annual budget amount that has been approved by the court pursuant to Code Section 29-5-30 for the support, care, education, health, and welfare of the ward and those persons who are entitled to be supported by the ward;
- (2) Enter into contracts for labor or service upon such terms as the conservator may deem best, but only to the extent that the annual compensation payable under such contracts, when combined with other anticipated disbursements, does not exceed the amount of the annual income or, if applicable, the annual budget amount that has been approved by the court pursuant to Code Section 29-5-30;
- (3) Borrow money for one year or less and bind the ward or the ward's property, but only if the amount of the annual payments, when combined with other anticipated disbursements, does not exceed the amount of the annual income or, if applicable, the annual budget amount that has been approved by the court pursuant to Code Section 29-5-30 and only if done for purposes of paying the ward's debts, repairing the ward's dwelling place, or providing for the support, care, education, health, or welfare of the ward and the persons who are entitled to be supported by the ward;
- (4) Receive, collect, and hold the ward's property, additions to the ward's property, and all related records;
- (5) Retain the property received by the conservator upon the creation of the conservatorship in accordance with the provisions of Code Section 29-5-31;
- (6) Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the ward in the name of or on behalf of the ward;

(7) Fulfill, as far as possible, or, to the extent permitted by law, disaffirm the executory contracts and comply with the executed contracts of the ward;

(8) Revoke a revocable trust set up by the ward or exercise such other powers of revocation, amendment, or withdrawal that are exercisable by the ward, but only if the governing instrument expressly allows a conservator to revoke the trust or exercise the powers;

(9) Examine the will and any other estate planning documents of the ward;

(10) Appoint an attorney in fact to act for the conservator when the conservator is unable to act; provided, however, that the conservator and the conservator's sureties shall be bound for the acts of the attorney as if the acts were the personal acts of the conservator;

(11) Invest the ward's property pursuant to the provisions of Code Sections 29-5-32 and 29-5-33;

(12) Sell the ward's stocks and bonds pursuant to the provisions of subsection (b) of Code Section 29-5-35;

(13) Compromise any contested or doubtful claim for or against the ward if the proposed gross settlement as defined in Code Section 29-3-3 is in the amount of \$15,000.00 or less; and

(14) Release the debtor and compromise all debts in the amount of \$15,000.00 or less when the collection of the debt is doubtful.

(b)(1) In the petition for appointment, or at any time during the conservatorship, the conservator may request the continuing power:

(A) To invest the ward's property in investments other than those authorized in Code Section 29-5-32, pursuant to the provisions of Code Section 29-5-34, without further court approval of any investment;

(B) To sell, rent, lease, exchange, or otherwise dispose of any or all of the ward's real or personal property without complying with the provisions of Code Section 29-5-35 other than the provisions for additional bond set forth in subsection (e) of Code Section 29-5-35; or

(C) To continue the operation of any farm or business in which the ward has an interest.

(2) Unless the request for the powers described in paragraph (1) of this subsection is made in the petition for the initial appointment of the conservator, the court shall order a hearing as the court deems appropriate. Notice shall be given by personal service to the ward and

a guardian ad litem appointed for the ward. Notice shall be given by first-class mail to the guardian of the ward, if any; the surety on the conservator's bond; and to the following relatives of the ward whose whereabouts are known:

- (A) The spouse of the ward; and
- (B) All adult children of the ward; or
- (C) If there is no adult child, then at least two adults in the following order of priority:
  - (i) Lineal descendants of the ward;
  - (ii) Parents and siblings of the ward; and
  - (iii) Friends of the ward.

(c) At the time of the appointment of the conservator or at any time thereafter, and after appointment of a guardian ad litem for the ward and a hearing as the court deems appropriate, any of the following powers may be specifically granted to the conservator on a case-by-case basis, upon notice as the court shall determine:

- (1) To make disbursements that exceed by no more than a specific amount the annual income or, if applicable, the annual budget amount that has been approved by the court pursuant to Code Section 29-5-30 for the support, care, education, health, and welfare of the ward and those persons who are entitled to be supported by the ward;
- (2) To enter into contracts for labor or service for which the compensation payable under such contracts, when combined with other disbursements from the estate, exceeds the annual income or, if applicable, the annual budget amount that has been approved by the court pursuant to Code Section 29-5-30;
- (3) To make specific investments of the ward's property that do not comply with the provisions of Code Section 29-5-32, pursuant to the provisions of Code Section 29-5-34;
- (4) To sell, rent, lease, exchange, or otherwise dispose of specific items of the ward's real or personal property without complying with the provisions of Code Section 29-5-35 other than the provisions for additional bond set forth in subsection (e) of Code Section 29-5-35;
- (5) To compromise a contested or doubtful claim for or against the ward if the proposed gross settlement as defined in Code Section 29-3-3 is more than \$15,000.00;
- (6) To release the debtor and compromise all debts for which the collection is doubtful when the amount of the debt is \$15,000.00 or more;

(7) To use the ward's property to erect a dwelling for the ward or make an addition or renovation to the ward's dwelling place;

(8) To establish or add property to a trust for the benefit of the ward and, if applicable, those individuals who are entitled to support from the ward; provided, however, unless otherwise provided by court order pursuant to Code Section 29-5-36, the trust must provide that the ward may revoke the trust if the ward is restored to capacity and the trust shall terminate upon the ward's death and any property remaining in the trust shall be paid to the ward's estate;

(9) To disclaim or renounce any property or interest in property of the ward in accordance with the provisions of Code Section 53-1-20;

(10) To engage in estate planning for the ward pursuant to the provisions of Code Section 29-5-36; and

(11) To perform such other acts as may be in the best interest of the ward.

(d) In granting any of the powers described in subsections (b) and (c) of this Code section, the court shall consider the views of the guardian, if available, or, if there is no guardian, of others who have custody of the ward.

(e) In performing any of the acts described in this Code section, the conservator shall endeavor to cooperate with the guardian or, if there is no guardian, with others who have custody of the ward. (Code 1981, § 29-5-23, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 60, § 29/HB 95; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the Revised Probate Code of 1998" following "Section 53-1-20" at the end of paragraph (c)(9).

## ARTICLE 4

### PROTECTION OF PROPERTY INTERESTS

#### **29-5-32. Investment of estate funds by conservator.**

A conservator is authorized to invest estate funds in the following and shall not otherwise be liable for such investment, except in the case of gross neglect:

(1) Bonds issued by any county or municipality of this state which have been validated as required by law for the validation of county and municipal bonds;

(2) Bonds issued by any county board of education under Subpart 1 of Part 3 of Article 9 of Chapter 2 of Title 20 for the purpose of

building and equipping schoolhouses, which bonds have been validated and confirmed as required under Part 1 of Article 2 of Chapter 82 of Title 36;

(3) Bonds and other securities issued by this state or by the Board of Regents of the University System of Georgia;

(4) Bonds or other obligations issued by the United States government and bonds of any corporation created by an act of Congress, the bonds of which are guaranteed by the United States government;

(5) Interest-bearing deposits in any financial institution located in this state, to the extent the deposits are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or comparable insurance;

(6) Bonds or other obligations issued by a housing authority pursuant to Article 1 of Chapter 3 of Title 8 or issued by any public housing authority or agency of the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof, as authorized by Code Section 8-3-81;

(7) Bonds or other obligations issued by a housing authority in connection with a redevelopment program pursuant to Chapter 4 of Title 8, as authorized by Code Section 8-4-11;

(8) Bonds issued by the Georgia Education Authority, pursuant to Part 3 of Article 11 of Chapter 2 of Title 20, as authorized by Code Section 20-2-570;

(9) Bonds issued by the Georgia Building Authority (Hospital), pursuant to Article 2 of Chapter 7 of Title 31, as authorized by Code Section 31-7-27;

(10) Bonds issued by the Georgia Highway Authority, pursuant to Code Section 32-10-30, as authorized by Code Section 32-10-45;

(11) Bonds or other obligations issued by a municipality or county pursuant to Chapter 61 of Title 36 or by any urban redevelopment agency or housing authority vested with urban redevelopment project powers under Code Section 36-61-17, provided that such bonds or other obligations are secured by an agreement between the issuer and the federal government in accordance with Code Section 36-61-13, as authorized by Code Section 36-61-13;

(12) Bonds issued by the Georgia Building Authority (Penal), pursuant to Chapter 3 of Title 42, as authorized by Code Section 42-3-21;

(13) Farm loan bonds issued by federal land banks or joint-stock land banks under the Federal Farm Loan Act, 12 U.S.C. Sections

2001, et seq., and any notes, bonds, debentures, or other similar obligations, consolidated or otherwise, issued by farm credit institutions pursuant to the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, et seq.;

(14) Real property loans:

- (A) Which are not in default;
- (B) Which are secured by mortgages or deeds to secure debt conveying a first security title to improve real property;
- (C) Which are insured pursuant to the National Housing Act, 12 U.S.C. Sections 1701, et seq.; and
- (D) With respect to which loans, on or after default, pursuant to such insurance, debentures in at least the full amount of unpaid principal are issuable, which debentures are fully and unconditionally guaranteed both as to principal and interest by the United States; and

(15) Any other investments which are designated under the laws of this state as lawful or legal investments for guardians or conservators. (Code 1981, § 29-5-32, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2010, p. 579, § 15/SB 131.)

**The 2010 amendment**, effective July 1, 2010, deleted “, as authorized by Code Section 53-12-286” following “et seq.” at the end of paragraph (13) and deleted “, as authorized by Code Section 53-12-284” following “loans” at the end of the introductory paragraph of paragraph (14).

**Editor's notes.** — Article 2, Chapter 7, Title 31, referred to in paragraph (9), was repealed by Ga. L. 2008, p. 224, § 2.

Code Section 42-3-21, referred to in paragraph (12), was repealed by Ga. L. 2008, p. 224, § 3.

## ARTICLE 6

### COMPENSATION OF CONSERVATORS

#### 29-5-50. Determining compensation of conservator; failure to file annual returns results in forfeiture of commission.

**Law reviews.** — For survey article on wills, guardianships, and fiduciary

administration, see 60 Mercer L. Rev. 417 (2008).

### JUDICIAL DECISIONS

**Stocks and bonds not “sums of money.”** — A probate court properly ordered a guardian to repay to an estate’s administrator commissions the guardian had received on stocks and bonds, as they were not “sums of money” under former

O.C.G.A. § 29-2-42(a) (now O.C.G.A. § 29-5-50). *In re Estate of Miraglia*, 290 Ga. App. 28, 658 S.E.2d 777 (2008).

**Prejudgment interest.** — When a guardian disputed whether the guardian was owed commissions for stocks and

bonds under former O.C.G.A. § 29-2-42(a) (now O.C.G.A. § 29-5-50), not the amount paid for such commissions, the estate's administrator was entitled to prejudgment interest under O.C.G.A. § 7-4-15; the fact that the guardian disputed liability at trial did not convert the claim into a claim for an uncertain and, therefore, unliquidated amount. *In re Estate of Miraglia*, 290 Ga. App. 28, 658 S.E.2d 777 (2008).

**Conservator forfeited commission based on conservator's admitted mismanagement of ward's accounts.** — Probate court was authorized to disallow a commission taken by a conservator in the amount of \$7,382 based on the conservator's admitted failure to file correct annual returns, commingling of funds, and other mismanagement pursuant to O.C.G.A. § 29-5-50(e). *In re Hudson*, 300 Ga. App. 340, 685 S.E.2d 323 (2009).

## ARTICLE 8

### MODIFICATION AND TERMINATION OF CONSERVATORSHIP

#### **29-5-71. Modification of conservatorship; contents of petition for modification; burden of proof.**

(a) Upon the petition of any interested person, including the ward, or upon the court's own motion, the court may modify the conservatorship by adjusting the duties or powers of the conservator, as defined in Code Sections 29-5-22 and 29-5-23, or the powers of the ward, as defined in Code Sections 29-5-20 and 29-5-21, or by making other appropriate adjustments to reflect the extent of the current capacity of the ward or other circumstances of the conservatorship. Except for good cause shown, the court shall order that notice of the petition be given, in whatever form the court deems appropriate, to the ward, the conservator, the ward's legal counsel, if any, and the ward's guardian, if any. In any proceeding under this Code section that would expand or increase the powers of the conservator or further restrict the rights of the ward, the court shall appoint legal counsel for the ward. In all other cases, the court, in its discretion, may appoint legal counsel for the ward or a guardian ad litem, or both.

(b) If the petition for modification alleges a significant change in the capacity of the ward, it must be supported either by the affidavits of two persons who have knowledge of the ward, one of whom may be the petitioner, or of a physician licensed to practice medicine under Chapter 34 of Title 43, psychologist licensed to practice under Chapter 39 of Title 43, or a licensed clinical social worker, setting forth the supporting facts and determinations. If, after reviewing the petition and the affidavits, the court determines that there is no probable cause to believe that there has been a significant change in the capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall order that an evaluation be conducted, in accordance with the provisions of subsection (d) of Code Section 29-5-11. If, after reviewing the evaluation report, the court finds that there is no probable cause to believe that there has been a significant change in the

capacity of the ward, the court shall dismiss the petition. If the petition is not dismissed, the court shall schedule a hearing, with such notice as the court deems appropriate.

(c) If the petition for modification does not allege a significant change in the capacity of the ward, the court in its discretion may modify the conservatorship upon a showing that the modification is in the ward's best interest; provided, however, that the court may order compliance with any of the provisions of subsection (b) of this Code section prior to granting the petition for modification.

(d) In any proceeding under this Code section that would expand or increase the powers of the conservator or further restrict the powers of the ward, the burden is on the petitioner to show by clear and convincing evidence that the modification is in the ward's best interest. In any proceeding under this Code section that would restrict the powers of the conservator or restore powers to the ward, the burden is on the petitioner to show by a preponderance of the evidence that the modification is in the ward's best interest.

(e) No petition for modification shall be allowed by the court within two years after the denial or dismissal on the merits of a petition for substantially the same modification unless the petitioner shows a significant change in the condition or circumstances of the ward. (Code 1981, § 29-5-71, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 551, § 2/SB 134.)

**The 2011 amendment**, effective May 12, 2011, in the first sentence of subsection (a), substituted "Code Sections 29-5-22 and 29-5-23" for "Code Sections 29-5-14 and 29-5-15" and substituted "Code 29-5-20 and 29-5-21" for "Code Section 29-5-13".

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2011, "Code

Sections" was substituted for "Code" near the middle of the first sentence of subsection (a).

**Editor's notes.** — Ga. L. 2011, p. 551, § 2, which amended this Code section, purported to amend Code Section 24-5-71 but actually amended Code Section 29-5-71.

## 29-5-72. Termination of conservatorship; required evidence to support; burden of proof; death of ward.

### JUDICIAL DECISIONS

**Notice by publication sufficient.** — Constructive notice by publication of a conservator's petition for final settlement and discharge from the conservatorship under O.C.G.A. §§ 29-5-80(a) and 29-5-81(b) did not violate the due process

rights of a child of the ward who stood to benefit from the ward's will; the child did not have a legally protected interest in the discharge proceedings. *Ray v. Stewart*, 287 Ga. 789, 700 S.E.2d 367 (2010).

## ARTICLE 9

### DISMISSAL OF CONSERVATOR

#### **29-5-80. Petition for dismissal of conservator; final return; notice; order dismissing conservator.**

##### JUDICIAL DECISIONS

**Notice by publication.** — Constructive notice by publication of a conservator's petition for final settlement and discharge from the conservatorship under O.C.G.A. §§ 29-5-80(a) and 29-5-81(b) did not violate the due process rights of a

child of the ward who stood to benefit from the ward's will; the child did not have a legally protected interest in the discharge proceedings. *Ray v. Stewart*, 287 Ga. 789, 700 S.E.2d 367 (2010).

#### **29-5-81. Final settlement; appearance by ward or successor conservator; return of property.**

##### JUDICIAL DECISIONS

**Action for breach of fiduciary duty was litigated by consent in an accounting proceeding.** — Although the record showed that a conservator did not bring a claim pursuant to O.C.G.A. § 29-5-93(a)(4) in writing, but sought only an accounting pursuant to O.C.G.A. § 29-5-81, the conservator did not object when the administrator raised the issue at the hearing. As a result, the issue of whether the conservator breached the conservator's fiduciary duty was litigated by the implied consent of the parties pursuant to O.C.G.A. § 9-11-15(b). *In re Hudson*, 300 Ga. App. 340, 685 S.E.2d 323 (2009).

child served both as conservator and as executrix of the parent's will by requiring the appointment of a guardian ad litem to represent the deceased adult ward and to protect the ward's property rights. The guardian ad litem was served personally and reviewed and approved the conservator's final report. *Ray v. Stewart*, 287 Ga. 789, 700 S.E.2d 367 (2010).

**Conflict of interest when the same person is conservator and executrix.** — O.C.G.A. § 29-5-81(b) resolved any potential conflict of interest when the ward's

**Notice by publication.** — Constructive notice by publication of a conservator's petition for final settlement and discharge from the conservatorship under O.C.G.A. §§ 29-5-80(a) and 29-5-81(b) did not violate the due process rights of a child of the ward who stood to benefit from the ward's will; the child did not have a legally protected interest in the discharge proceedings. *Ray v. Stewart*, 287 Ga. 789, 700 S.E.2d 367 (2010).

## ARTICLE 10

### REMOVAL OF CONSERVATOR FOR OTHER REASONS

#### **29-5-93. Cause of action for breach of fiduciary duty.**

##### JUDICIAL DECISIONS

**Action for breach of fiduciary duty litigated by implied consent although**

**not raised in the pleadings.** — Although the record showed that a conser-

vator did not bring a claim pursuant to O.C.G.A. § 29-5-93(a)(4) in writing, but sought only an accounting pursuant to O.C.G.A. § 29-5-81, the conservator did not object when the administrator raised the issue at the hearing. As a result, the

issue of whether the conservator breached the conservator's fiduciary duty was litigated by the implied consent of the parties pursuant to O.C.G.A. § 9-11-15(b). *In re Hudson*, 300 Ga. App. 340, 685 S.E.2d 323 (2009).

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## CHAPTER 8

### COUNTY GUARDIANS

Sec.	Sec.
29-8-1. County administrators as ex officio county guardians.	29-8-2. Bond requirements.

#### **29-8-1. County administrators as ex officio county guardians.**

County administrators as provided for in Article 5 of Chapter 6 of Title 53 are ex officio county guardians and shall serve as guardians or conservators in all cases where appointed by the court. (Code 1981, § 29-8-1, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Title 53" in the middle of this Code section.

#### **29-8-2. Bond requirements.**

In addition to the bond required in Code Section 53-6-41, county guardians shall give another bond with good security, to be judged by the court, in the sum of \$5,000.00. The bond shall be payable to the court for the benefit of all concerned. It shall be attested by the judge or clerk of the court and shall be conditioned upon the faithful discharge of the county guardian's duty as such, as required by law. Actions on the bond may be brought by any person aggrieved by the misconduct of the county guardian, as provided by law for actions on the bonds of other guardians. (Code 1981, § 29-8-2, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 752, § 29/HB 142.)

**The 2011 amendment**, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, deleted "of the

Revised Probate Code of 1998" following "Code Section 53-6-41" in the first sentence.

## CHAPTER 9

## COURT PROCEEDINGS

Sec.	Sec.
29-9-10. Oath by department delegate.	29-9-19. Petitioner for guardian or conservator to submit to criminal history records check.
29-9-13.1. (Effective January 1, 2013. See note.) Authentication of documents.	
29-9-18. Sealing of records on conservatorship or guardianship.	

**29-9-10. Oath by department delegate.**

When appointed pursuant to subsection (b.1) of Code Section 29-4-3, a duly appointed delegate of the Department of Human Services is authorized to take the oath of guardianship before the judge of any probate court of this state. (Code 1981, § 29-9-10, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2005, p. 509, § 4/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Hu-

man Services” for “Department of Human Resources” in this Code section.

**29-9-13.1. (Effective January 1, 2013. See note.) Authentication of documents.**

Whenever it is required that a document which is to be filed in the court be authenticated or exemplified, such requirement shall be met by complying with the provisions of Code Section 24-9-922 and paragraphs (1) through (4) of Code Section 24-9-902 and such full faith and credit shall be given to the document as is provided in such Code sections. (Code 1981, § 29-9-13.1, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2011, p. 99, § 41/HB 24; Ga. L. 2012, p. 775, § 29/HB 942.)

**Delayed effective date.** — This Code section, as set forth above, is effective on January 1, 2013. For the version of this Code section effective until that date, see the bound volume.

**The 2011 amendment**, effective January 1, 2013, substituted “Code Section 24-9-922 and paragraphs (1) through (4) of Code Section 24-9-902” for “Code Section 24-7-24” in the middle of this Code section. See editor’s note for applicability.

**The 2012 amendment**, effective January 1, 2013, part of an Act to revise, modernize, and correct the Code, substi-

tuted “as is provided in such Code sections” for “as is provided in that Code section” at the end of this Code section.

**Editor’s notes.** — Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

**Law reviews.** — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

### 29-9-18. Sealing of records on conservatorship or guardianship.

(a) All of the records relating to any minor or adult guardianship or conservatorship that is granted under this title shall be kept sealed, except for a record of the names and addresses of the minor, ward, and guardian or conservator and their legal counsel of record and the date of filing, granting, and terminating the guardianship or conservatorship. The sealed records may be examined by the ward and the ward's legal counsel, the minor, the minor's parents, and the minor's legal counsel, the guardian or conservator and the guardian or conservator's legal counsel, and any surety for the conservator and legal counsel for the surety at any time.

(b) A request by other interested parties to examine the sealed records shall be by petition to the court and the ward and guardian or conservator shall have at least 30 days' prior written notice of a hearing on the petition; provided, however, that for good cause shown to the court, the court may shorten such notice period or grant the petition without notice. The matter shall come before the court in chambers. The order allowing access shall be granted upon a finding that the public interest in granting access to the sealed records clearly outweighs the harm otherwise resulting to the privacy of the person in interest, and the court shall limit the portion of the file to which access is granted to that which is required to meet the legitimate needs of the petitioner. (Code 1981, § 29-9-18, enacted by Ga. L. 2004, p. 161, § 1; Ga. L. 2008, p. 715, § 7/SB 508.)

**The 2008 amendment**, effective July 1, 2008, designated the existing provisions as subsections (a) and (b); in subsection (a), in the first sentence, inserted "minor or adult" near the beginning, inserted "minor," and inserted a comma following "ward" near the middle, and, in the last sentence, substituted ", the minor, the minor's parents, and the minor's legal counsel," for "and by", and inserted ", and any surety for the conservator and legal counsel for the surety" near the end; in subsection (b), added the proviso at the end of the first sentence and added ", and

the court shall limit the portion of the file to which access is granted to that which is required to meet the legitimate needs of the petitioner" at the end of the last sentence.

**Law reviews.** — For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008). For annual survey on trial practice and procedure, see 61 Mercer L. Rev. 363 (2009). For annual survey on wills, trusts, guardianships, and fiduciary administration, see 61 Mercer L. Rev. 385 (2009).

### 29-9-19. Petitioner for guardian or conservator to submit to criminal history records check.

(a) As used in this Code section, the term "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other

formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release.

(b) The court may require a petitioner seeking to become a guardian or conservator, or a nominated guardian or conservator if such person is different from the petitioner, to submit to a criminal history records check. The petitioner or nominee shall submit his or her fingerprints to the Georgia Crime Information Center with the appropriate fee. The Georgia Crime Information Center shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of its records and shall obtain a report containing criminal history record information. The Georgia Crime Information Center shall also promptly conduct a search of its records and any records to which it has access. The Georgia Crime Information Center shall provide a report of the petitioner's or nominee's criminal history record information to the court for its consideration in determining the suitability of the petitioner or nominee to serve as a guardian or conservator. (Code 1981, § 29-9-19, enacted by Ga. L. 2012, p. 83, § 3/HB 247.)

**Effective date.** — This Code section became effective July 1, 2012.

## CHAPTER 10

### PUBLIC GUARDIANS

Sec.	Sec.
29-10-3. Qualifications and requirements; training.	29-10-10. Compensation.
29-10-4. Registration with the probate court; registration lists.	29-10-11. Appropriation of funds for compensation in certain circumstances.

#### **29-10-3. Qualifications and requirements; training.**

- (a) To be eligible to serve as a public guardian, an individual must:
  - (1) Be at least 18 years of age;
  - (2) Submit to a criminal background check with satisfactory results as prescribed by the Division of Aging Services of the Department of Human Services;
  - (3) Submit to an investigation of the individual's credit history as prescribed by the Division of Aging Services of the Department of Human Services;
  - (4) Attend and complete at least 20 hours of training approved by the Division of Aging Services of the Department of Human Services,

including but not limited to training conducted by such division, a professional association, or by the probate court;

(5) Demonstrate competency, education, and experience in guardianships, social work, or case management; and fiduciary integrity to perform the duties of a public guardian;

(6) Demonstrate competency and ability to carry out the values of the ward; and

(7) Agree to abide by the provisions of this chapter and to serve when appointed as public guardian without the ability to decline, except as provided for in Chapter 4 of this title.

(b) To be eligible to serve as a public guardian, an entity must:

(1) Maintain an appropriate level of liability insurance covering all employees and agents who will have direct contact with a ward in an amount or amounts approved by the probate court;

(2) Maintain a record for each employee and agent who will have direct contact with a ward and ensure that each such employee and agent submits to and meets the requirements of subsection (a) of this Code section;

(3) Submit to an investigation of the entity's financial records; and

(4) Agree to abide by the provisions of this chapter and to serve when appointed as public guardian without the ability to decline, except as provided for in Chapter 4 of this title.

(c) An individual or entity shall submit all required documentation as specified by the probate court to show that such individual or entity and such entity's employees and agents meet the requirements of this Code section.

(d) After completion of the initial training, a public guardian or employee or agent of a public guardian who will have direct contact with a ward, if an entity, must complete at least 20 additional hours of training every two years. The initial and subsequent training shall include, but not be limited to, instruction in:

(1) Basic principles of guardianship;

(2) Rights of the ward;

(3) Alternatives to guardianship;

(4) Court procedures;

(5) Legal duties, responsibilities, and roles of guardians;

(6) Fiduciary responsibilities, record keeping, reporting, administrative duties, intake process, and planning;

- (7) Availability of resources, public benefits, and social services;
- (8) Health care and end-of-life planning;
- (9) Mental, developmental, and physical disabilities;
- (10) Communications;
- (11) Case management; and
- (12) Property management.

(e) Any costs incurred by a public guardian to comply with these requirements shall be at the expense of the individual or private entity and shall not be paid with the assets of any ward. (Code 1981, § 29-10-3, enacted by Ga. L. 2005, p. 509, § 5/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human

Resources” in paragraphs (a)(2) through (a)(4).

#### **29-10-4. Registration with the probate court; registration lists.**

(a) An individual who meets the requirements of Code Section 29-10-3 may be registered as a public guardian in the probate court of the county in which he or she is domiciled upon approval by the probate court. Such individual may also be registered in the probate court of other counties within a reasonable distance of the county in which he or she is domiciled as approved by such other probate courts.

(b) A private entity that meets the requirements of Code Section 29-10-3 may be registered as a public guardian in the probate court of any county upon approval by such probate court.

(c) The probate court of a county shall have the sole discretion regarding the approval and registration of public guardians. Each probate court shall maintain a list of public guardians who have been registered and approved in its county. The Division of Aging Services of the Department of Human Services shall maintain a master list of registered public guardians throughout the state; and the probate courts shall submit, on January 1 and July 1 of each year or more often as required by the division, the list of registered public guardians in each county to the Division of Aging Services.

(d) The Division of Aging Services of the Department of Human Services shall develop a standard form that may be used by probate courts in registering public guardians. (Code 1981, § 29-10-4, enacted by Ga. L. 2005, p. 509, § 5/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human

Resources” in the third sentence of subsection (c), and in subsection (d).

## **29-10-10. Compensation.**

Public guardians shall receive compensation for their services in accordance with the provisions of Chapter 4 of this title. However, for wards who have insufficient resources or income to pay the compensation provided for in Chapter 4 of this title, at the discretion of the probate court judge, a request for payment for the public guardian to the Division of Aging Services of the Department of Human Services, as provided for in Code Section 29-10-11, shall be made. A public guardian shall be paid the compensation provided for in Chapter 4 of this title pursuant to Code Section 29-10-11 to the extent that the available funds can meet that expense or, at the discretion of the judge, the public guardian’s actual expenses may be reimbursed from the funds pursuant to Code Section 29-10-11. (Code 1981, § 29-10-10, enacted by Ga. L. 2005, p. 509, § 5/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human

Resources” in the second sentence of this Code section.

## **29-10-11. Appropriation of funds for compensation in certain circumstances.**

(a) The General Assembly is authorized to appropriate state funds, by line item appropriation, for the purpose of providing compensation to public guardians for services to wards who have insufficient resources or income to pay the compensation provided for in Chapter 4 of this title.

(b) Any such funds appropriated shall be administered by the Division of Aging Services of the Department of Human Services and paid, if funds are available, upon submission of appropriate documentation by the probate court pursuant to Code Section 29-10-10. (Code 1981, § 29-10-11, enacted by Ga. L. 2005, p. 509, § 5/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human

Resources” in subsection (b).

# TITLE 30

## HANDICAPPED PERSONS

Chap.

1. General Provisions, 30-1-1 through 30-1-6.
2. Georgia Industries for the Blind, 30-2-1 through 30-2-9.
5. Protection of Disabled Adults and Elder Persons, 30-5-1 through 30-5-10.
6. Personal Assistance Program for Persons with Disabilities, 30-6-1 through 30-6-5.
8. Georgia Council on Developmental Disabilities, 30-8-1.

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### CHAPTER 1

#### GENERAL PROVISIONS

Sec.	Sec.
30-1-5. "Hearing impaired person" defined; Georgia Commission on	Hearing Impaired and Deaf Persons.

**30-1-5. "Hearing impaired person" defined; Georgia Commission on Hearing Impaired and Deaf Persons.**

(a) For purposes of this Code section, the term "hearing impaired person" means any person who, absent the aid of a hearing device, has any degree of impairment in the ability to apprehend sound.

(b)(1)(A) There is created the Georgia Commission on Hearing Impaired and Deaf Persons, which shall consist of seven members. Five members shall be appointed by the Governor, one member shall be appointed by the Senate Committee on Assignments, and one member shall be appointed by the Speaker of the House of Representatives. At least two of the members shall be hearing impaired persons, and the remaining five members of the commission shall be selected from among parents of children who are hearing impaired persons, persons who are involved with hearing impaired persons or programs, and representatives of private providers of services to hearing impaired persons. Each commission member shall serve for a three-year term and until a successor is appointed and qualified. No member shall serve more than two consecutive terms. Any vacancy on the commission for any reason other than expiration of term shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

- (B) The commission shall select one member as chairperson.
- (C) The commission shall be attached to the Department of Human Services for administrative purposes only as provided by Code Section 50-4-3.
- (2) Members of the commission shall serve as such without compensation.
- (3) The commission shall serve as the principal agency of the state to advocate on behalf of hearing impaired persons by working to ensure those persons have equal access to the services, programs, and opportunities available to others.
- (4) The commission shall:
  - (A) Assist hearing impaired persons and parents of hearing impaired persons who are students in advocating for equal access to services, programs, and opportunities;
  - (B) Advise the Governor, General Assembly, commissioner of human services, and commissioner of community health on the development of policies, programs, and services affecting hearing impaired persons and on the use of appropriate federal and state moneys for such purposes;
  - (C) Create a public awareness of the special needs and potential of hearing impaired persons;
  - (D) Provide the Governor, General Assembly, commissioner of human services, and commissioner of community health with a review of ongoing services, programs, and proposed legislation affecting hearing impaired persons;
  - (E) Advise the Governor, General Assembly, commissioner of human services, and commissioner of community health on statutes, rules, and policies necessary to ensure that hearing impaired persons have equal access to benefits and services provided to individuals in this state;
  - (F) Recommend to the Governor, General Assembly, commissioner of human services, and commissioner of community health legislation designed to improve the economic and social conditions of hearing impaired persons in this state;
  - (G) Propose solutions to problems of hearing impaired persons in the areas of education, employment, human rights, human services, health, housing, and other related programs;
  - (H) Work with other state and federal agencies and private organizations to promote economic development for hearing impaired persons; and

(I) Coordinate its efforts with other state and local agencies serving hearing impaired persons.

(5) The commission may appoint, subject to the availability of funds and approval of the Governor, an executive director who must be experienced in administrative activities and familiar with the problems and needs of hearing impaired persons. The commission may delegate to the executive director any powers and duties under this subsection that do not require commission approval. The executive director may be removed at any time by a majority vote of the commission. The executive director shall coordinate the provision of necessary support services to the commission with the Department of Human Services. Subject to availability of funds, the executive director may employ and direct staff necessary to carry out commission mandates, policies, activities, and objectives.

(6) The commission may contract in its own name. Contracts must be approved by a majority of the members of the commission and executed by the chairperson and the executive director. The commission may apply for, receive, and expend in its own name grants and gifts of money consistent with the powers and duties specified in this subsection.

(7) The commission may prepare and distribute periodic reports to the Governor, General Assembly, commissioner of human services, and commissioner of community health concerning the activities of the commission and the needs and concerns of hearing impaired persons. (Code 1981, § 30-1-5, enacted by Ga. L. 1989, p. 1636, § 1; Ga. L. 2007, p. 241, § 1/HB 655; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in subparagraph (b)(1)(C), and in the last sentence of paragraph (b)(5);

and substituted “commissioner of human services” for “commissioner of human resources” in subparagraphs (b)(4)(B) and (b)(4)(D) through (b)(4)(F), and in paragraph (b)(7).

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## CHAPTER 2

### GEORGIA INDUSTRIES FOR THE BLIND

Sec.	Sec.
30-2-3. Supervision of industries by Georgia Vocational Rehabilitation Agency; acquisition of property.	30-2-7. Compensation of workers; observance of and payment for state holidays.

**30-2-3. Supervision of industries by Georgia Vocational Rehabilitation Agency; acquisition of property.**

(a) The industries shall be state institutions under the direction and supervision of the Georgia Vocational Rehabilitation Agency.

(b) The Georgia Vocational Rehabilitation Agency is authorized to provide the property necessary for the industries. The Georgia Vocational Rehabilitation Agency may acquire real property through the State Properties Commission pursuant to Code Section 50-16-38 or the agency may enter into rental agreements in order to acquire the needed space. (Ga. L. 1937, p. 579, § 5; Ga. L. 1949, p. 544, § 3; Ga. L. 1960, p. 172, § 1; Ga. L. 1972, p. 1015, § 1220; Ga. L. 1982, p. 830, § 1; Ga. L. 1984, p. 1017, § 1; Ga. L. 2000, p. 1137, § 5.1; Ga. L. 2012, p. 303, § 4/HB 1146.)

**The 2012 amendment**, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Department of Labor” throughout this Code section; and, in subsection (b), substituted “agency” for “department” near the end of the second

sentence, and deleted the former last sentence, which read “The acquisition of such property is not deemed to be ‘administrative space’ within the meaning of Article 2 of Chapter 5 of Title 50, the ‘State Space Management Act of 1976.’”

**30-2-7. Compensation of workers; observance of and payment for state holidays.**

(a) Each worker in an industry who is otherwise entitled to share in the benefits provided for blind persons under Articles 1 and 3 of Chapter 4 of Title 49 shall, in addition to the amount received as compensation for his or her services in the industry, receive from the Department of Human Services such amount of public assistance as shall be determined in accordance with the regulations approved by the commissioner of human services.

(b) All workers in the industries shall observe all holidays observed by other departments and agencies of the state government and shall receive their proportionate compensation for each holiday so observed. If any worker shall be compensated in such a manner that his or her daily compensation is not fixed, but rather is based upon a production basis, he or she shall receive by way of compensation for such observance of state holidays the average daily production compensation received by him or her during the immediately preceding 30 day period, holidays and Sundays excluded. The Georgia Vocational Rehabilitation Agency is authorized and directed to pay such compensation from the funds appropriated to and available for the agency. (Ga. L. 1937, p. 579, § 8; Ga. L. 1963, p. 137, § 1; Ga. L. 1982, p. 830, § 1; Ga. L. 2000, p. 1137, § 5.2; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2012, p. 303, § 5/HB 1146.)

**The 2009 amendment**, effective July 1, 2009, in subsection (a), substituted “Department of Human Services” for “Department of Human Resources” near the middle and substituted “commissioner of human services” for “commissioner of human resources” at the end.

**The 2012 amendment**, effective July

1, 2012, inserted “or her” throughout this Code section; and, in subsection (b), inserted “or she” in the second sentence, and, in the third sentence, substituted “Georgia Vocational Rehabilitation Agency” for “Department of Labor” and substituted “agency” for “department”.

## CHAPTER 3

### ACCESS TO AND USE OF PUBLIC FACILITIES BY PERSONS WITH DISABILITIES

#### 30-3-1. Purpose and intent of chapter.

#### JUDICIAL DECISIONS

**Cited** in Hollis & Spann, Inc. v. Hopkins, 301 Ga. App. 29, 686 S.E.2d 817 (2009).

## CHAPTER 5

### PROTECTION OF DISABLED ADULTS AND ELDER PERSONS

Sec.	Sec.
30-5-3. Definitions.	30-5-8. Criminal offenses and penalties.
30-5-6. Cooperation of other public agencies with director; power of director to contract for provision of medical evaluations; regulations.	30-5-10. Cooperative effort in development of programs relating to abuse and exploitation of persons 65 years of age or older.
30-5-7. Confidentiality of public records.	

**Law reviews.** — For article, “The United Nations Convention on the Rights of Persons with Disabilities and its Implications for the Rights of Elderly People under International Law,” see 25 Ga. St.

U. L. Rev. 527 (2009). For article, “Disability Rights, Disability Discrimination, and Social Insurance,” see 25 Ga. St. U. L. Rev. 575 (2009). For article, “Simplify You, Classify You: Stigma, Stereotypes and

Civil Rights in Disability Classification Systems," see 25 Ga. St. U. L. Rev. 607 (2009).

### 30-5-2. Legislative purpose.

#### JUDICIAL DECISIONS

**Construction of O.C.G.A. § 30-5-8.** — Trial court erred when the court denied the defendant's motion to quash the count of an indictment charging the defendant with exploitation of a disabled adult in violation of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-8, because the legislature did not intend for § 30-5-8(a) to apply to sexual acts such as that alleged in the indictment; the most reasonable construction of § 30-5-8(a) is that the legislature did not intend for the statute to apply to sexual acts because the legislature intended for § 30-5-8 to apply only to specifically defined non-sexual acts, and the statute gradually increased the penalties for

these non-sexual acts in response to a perceived need to protect disabled persons from "abuse," "neglect," and "exploitation" as defined by the Act, O.C.G.A. § 30-5-3. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

**No application to two-party financial transactions.** — Court was unconvinced that the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-1 et seq., was designed to apply to a two-party financial transaction, which served as the basis of the creditors' claim. *Thompson v. Hornyak (In re Hornyak)*, No. 08-70254-MGD; No. 08-09048; No. 10-09002, 2010 Bankr. LEXIS 1419 (Bankr. N.D. Ga. Apr. 1, 2010).

### 30-5-3. Definitions.

As used in this chapter, the term:

- (1) "Abuse" means the willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.
- (2) "Caretaker" means a person who has the responsibility for the care of a disabled adult or elder person as a result of family relationship, contract, voluntary assumption of that responsibility, or by operation of law.
- (3) "Court" means the probate court for the county of residence of the disabled adult or elder person or the county in which such person is found. In any case in which the judge of the probate court is unable to hear a case brought under this chapter within the time required for such hearing, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and be otherwise qualified for his or her duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or said judge's successor in office to hear

such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed, with the approval of the governing authority of the county for which such person is appointed, and shall be paid from the county funds of such county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served.

(4) "Department" means the Department of Human Services.

(5) "Director" means the director of the Division of Aging Services of the Department of Human Services, or the director's designee.

(6) "Disabled adult" means a person 18 years of age or older who is not a resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31, but who is mentally or physically incapacitated or has Alzheimer's disease, as defined in Code Section 31-8-180, or dementia, as defined in Code Section 49-6-72.

(7) "Disabled adult in need of protective services" means a disabled adult who is subject to abuse, neglect, or exploitation as a result of that adult's mental or physical incapacity.

(7.1) "Elder person" means a person 65 years of age or older who is not a resident of a long-term care facility as defined in Article 4 of Chapter 8 of Title 31.

(8) "Essential services" means social, medical, psychiatric, or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards but shall not include the taking into physical custody of a disabled adult or elder person without that person's consent.

(9) "Exploitation" means the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage.

(10) "Neglect" means the absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person.

(11) "Protective services" means services necessary to protect a disabled adult or elder person from abuse, neglect, or exploitation. Such services shall include, but not be limited to, evaluation of the

need for services and mobilization of essential services on behalf of a disabled adult or elder person. (Ga. L. 1981, p. 1320, § 3; Ga. L. 1997, p. 700, § 2; Ga. L. 2000, p. 136, § 30; Ga. L. 2005, p. 509, § 6/HB 394; Ga. L. 2007, p. 219, § 1/HB 233; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2009, p. 725, § 1/HB 457.)

**The 2009 amendments.** — The first 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraphs (4) and (5). The

second 2009 amendment, effective July 1, 2009, added “or has Alzheimer’s disease, as defined in Code Section 31-8-180, or dementia, as defined in Code Section 49-6-72” at the end of paragraph (6).

## JUDICIAL DECISIONS

**Construction of O.C.G.A. § 30-5-8.** — Trial court erred when the court denied the defendant’s motion to quash the count of an indictment charging the defendant with exploitation of a disabled adult in violation of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-8, because the legislature did not intend for § 30-5-8(a) to apply to sexual acts such as that alleged in the indictment; the most reasonable construction of § 30-5-8(a) is that the legislature did not intend for the statute to apply to sexual acts because the legislature intended for § 30-5-8 to apply only to specifically defined non-sexual acts, and the statute gradually increased the penalties for these non-sexual acts in response to a perceived need to protect disabled persons from “abuse,” “neglect,” and “exploitation” as defined by the Act, O.C.G.A. § 30-5-3. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

**“Elder person”.** — Creditor did not qualify as an elder person after the creditor testified that the creditor was sixty-eight years old at the time of trial; therefore, at the time the loan was pro-

cured, in March of 2006, the creditor was sixty-four years of age. Under the definition section of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-1 et seq., an elder person is defined as a person sixty-five years of age or older under O.C.G.A. § 30-5-3(7.1). *Thompson v. Hornyak* (In re Hornyak), No. 08-70254-MGD; No. 08-09048; No. 10-09002, 2010 Bankr. LEXIS 1419 (Bankr. N.D. Ga. Apr. 1, 2010).

**Evidence of disabled adult.** — Trial court did not err when the court denied the defendant’s motion to quash the count of an indictment charging the defendant with exploitation of a disabled adult in violation of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-8, on the ground that the victim was not “disabled” because the victim read at a first- or second-grade level, did not understand monetary denominations, could not do personal care on a daily basis, and had an IQ of 30, which was well below the borderline of mental retardation. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

## 30-5-5. Investigation of reports of need for protective services; interference with investigation; provision of protective services.

## JUDICIAL DECISIONS

**Petition for appointment of conservator.** — Trial court did not err in denying a ward’s petition to strike the affidavit of a psychologist that accompanied a petition

for the appointment of a conservator to manage the ward’s property and financial affairs because although the ward did not agree to the appointment of a conservator,

the Department of Human Services nevertheless was authorized to petition for the appointment under O.C.G.A. § 30-5-5(e); because the Department was authorized to petition for a conservatorship, and inasmuch as O.C.G.A. § 29-5-10(c) contemplated that

such a petition be supported by the affidavit of a professional, such as a licensed psychologist, the Department did not act without any authority when the Department obtained an affidavit from the psychologist. *In re Cochran*, 314 Ga. App. 188, 723 S.E.2d 490 (2012).

### **30-5-6. Cooperation of other public agencies with director; power of director to contract for provision of medical evaluations; regulations.**

(a) The staff and physicians of local health departments, mental health clinics, and other public agencies shall cooperate fully with the director in the performance of the director's duties under this chapter.

(b) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate.

(c) The Board of Human Services shall adopt regulations to ensure the effective implementation of this chapter. (Ga. L. 1981, p. 1320, § 6; Ga. L. 1997, p. 700, § 2; Ga. L. 2009, p. 453, § 2-3/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted "Board of Human Services" for "Board of Human Resources" in subsection (c).

### **30-5-7. Confidentiality of public records.**

All records pertaining to the abuse, neglect, or exploitation of disabled adults or elder persons in the custody of the department shall be confidential; and access thereto by persons other than the department, the director, or the district attorney shall only be by valid subpoena or order of any court of competent jurisdiction. Nothing in this Code section shall be construed to deny state agencies participating in joint investigations at the request of and with the department or to deny law enforcement personnel who are conducting an investigation into any criminal offense in which an elder person is a victim from having access to such records. (Ga. L. 1981, p. 1320, § 7; Ga. L. 1997, p. 700, § 2; Ga. L. 1999, p. 562, § 7; Ga. L. 2009, p. 453, § 2-14/HB 228.)

**The 2009 amendment**, effective July 1, 2009, inserted "state agencies participating in joint investigations at the re-

quest of and with the department or to deny" in the middle of the last sentence of this Code section.

### **30-5-8. Criminal offenses and penalties.**

(a)(1)(A) In addition to any other provision of law, the abuse or exploitation of any disabled adult or elder person shall be unlawful.

(B) In addition to any other provision of law, the neglect of any disabled adult or elder person by a guardian, caretaker, or other person supervising the welfare of or having immediate charge or custody of such disabled adult or elder person shall be unlawful.

(2) In addition to any other provision of law, it shall be unlawful for a person to act with the specific intent to abuse, neglect, or commit exploitation of any disabled adult. For purposes of this paragraph only, the term "disabled adult" means a person 18 years of age or older who is:

(A) A resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31; and

(B) Mentally or physically incapacitated or has Alzheimer's disease, as defined in Code Section 31-8-180, or dementia, as defined in Code Section 49-6-72.

An owner, officer, administrator, or board member of a long-term care facility shall not be held criminally liable for the actions of a person who is convicted pursuant to this paragraph. Nothing in this paragraph shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided under any other law.

(3) Except as otherwise provided in Title 16, any person violating the provisions of this subsection shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years.

(b)(1) It shall be unlawful for any person or official required by paragraph (1) of subsection (a) of Code Section 30-5-4 to report a case of disabled adult or elder person abuse to fail knowingly and willfully to make such report.

(2) Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

(c) Any violation of this Code section shall constitute a separate offense. (Code 1981, § 30-5-8, enacted by Ga. L. 1984, p. 785, § 3; Ga. L. 1997, p. 700, § 2; Ga. L. 1999, p. 562, § 8; Ga. L. 2001, p. 484, § 1; Ga. L. 2003, p. 298, § 1A; Ga. L. 2007, p. 219, § 2/HB 233; Ga. L. 2009, p. 725, § 2/HB 457; Ga. L. 2010, p. 878, § 30/HB 1387; Ga. L. 2012, p. 351, § 1/HB 1110.)

**The 2009 amendment**, effective July 1, 2009, in subsection (a), added paragraph (a)(2) and redesignated former paragraph (a)(2) as present paragraph (a)(3).

**The 2010 amendment**, effective June

3, 2010, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(2).

**The 2012 amendment**, effective July 1, 2012, in paragraph (a)(1), designated the existing provisions as subparagraph

(a)(1)(A), deleted “, neglect,” following “the abuse” in present subparagraph (a)(1)(A), and added subparagraph (a)(1)(B).

### JUDICIAL DECISIONS

**Construction of O.C.G.A. § 30-5-8.** — Trial court erred when the court denied the defendant's motion to quash the count of an indictment charging the defendant with exploitation of a disabled adult in violation of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-8, because the legislature did not intend for § 30-5-8(a) to apply to sexual acts such as that alleged in the indictment; the most reasonable construction of § 30-5-8(a) is that the legislature did not intend for the statute to apply to sexual acts because the legislature intended for § 30-5-8 to apply only to specifically defined non-sexual acts, and the statute gradually increased the penalties for these non-sexual acts in response to a perceived need to protect disabled persons from “abuse,” “neglect,” and “exploitation” as defined by the Act, O.C.G.A. § 30-5-3. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

**Evidence sufficient for conviction.**

Because there was evidence to support each fact necessary to make out the state's case, the jury was authorized to find that the defendant was guilty beyond a reasonable doubt of family violence battery, O.C.G.A. § 16-5-23.1, criminal trespass, O.C.G.A. § 16-7-21, and abuse of an elder person, O.C.G.A. § 30-5-8; the victim's recollection of what occurred on the night at issue was contradicted by the victim's contemporaneous statements to neighbors and the police, as well as the victim's

statements to the daughter the next morning that the defendant had grabbed the victim by the arm and twisted the arm, thereby causing the wound and other bruises. *Laster v. State*, 311 Ga. App. 360, 715 S.E.2d 768 (2011).

**Requirement of residency in long term care facility.** — An adult did not qualify for protection under the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-1 et seq. Although there was credible testimony and evidence that the adult suffered from disabilities following a stroke, under this Act, a disabled adult was limited to a resident of a long-term care facility under O.C.G.A. § 30-5-8(a)(2)(A). *Thompson v. Hornyak* (In re Hornyak), No. 08-70254-MGD; No. 08-09048; No. 10-09002, 2010 Bankr. LEXIS 1419 (Bankr. N.D. Ga. Apr. 1, 2010).

**Evidence of disabled adult.** — Trial court did not err when the court denied the defendant's motion to quash the count of an indictment charging the defendant with exploitation of a disabled adult in violation of the Disabled Adults and Elder Persons Protection Act, O.C.G.A. § 30-5-8, on the ground that the victim was not “disabled” because the victim read at a first- or second-grade level, did not understand monetary denominations, could not do personal care on a daily basis, and had an IQ of 30, which was well below the borderline of mental retardation. *Smith v. State*, 311 Ga. App. 757, 717 S.E.2d 280 (2011).

### 30-5-10. Cooperative effort in development of programs relating to abuse and exploitation of persons 65 years of age or older.

The Department of Human Services, the Georgia Peace Officer Standards and Training Council, the Prosecuting Attorneys' Council of the State of Georgia, and the Institute of Continuing Judicial Education shall develop programs for the education and training of social services, criminal justice, and judicial professionals concerning the abuse and exploitation of persons who are 65 years of age or older. Said agencies,

together with any other agency of this state which is involved in the investigation of the abuse or exploitation of persons who are 65 years of age or older, are directed to cooperate in the development of such training programs to the extent allowable under Article I, Section II, Paragraph III of the Constitution of this state. (Code 1981, § 30-5-10, enacted by Ga. L. 2000, p. 1085, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in the first sentence of this Code section.

## CHAPTER 6

### PERSONAL ASSISTANCE PROGRAM FOR PERSONS WITH DISABILITIES

Sec.	Sec.		
30-6-4.	Authority of Georgia Vocational Rehabilitation Agency to establish program.	30-6-5.	Establishment of standards and guidelines.

#### **30-6-4. Authority of Georgia Vocational Rehabilitation Agency to establish program.**

The Georgia Vocational Rehabilitation Agency is authorized to establish a personal assistance program for persons with severe disabilities residing in the State of Georgia. (Code 1981, § 30-6-4, enacted by Ga. L. 1988, p. 1355, § 1; Ga. L. 1991, p. 399, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2012, p. 303, § 3/HB 1146.)

**The 2012 amendment**, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in this Code section.

#### **30-6-5. Establishment of standards and guidelines.**

The Georgia Vocational Rehabilitation Agency, in conjunction with the Statewide Independent Living Council and other appointed users of personal assistance, shall develop standards necessary for the proper administration of the personal assistance program and shall establish guidelines for eligibility, services, training, and evaluation under the program. (Code 1981, § 30-6-5, enacted by Ga. L. 1988, p. 1355, § 1; Ga. L. 1991, p. 399, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2012, p. 303, § 3/HB 1146.)

**The 2012 amendment**, effective July 1, 2012, substituted “Georgia Vocational Rehabilitation Agency” for “Division of Rehabilitation Services of the Department of Labor” in this Code section.

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## CHAPTER 7

### BLIND PERSONS' LITERACY RIGHTS AND EDUCATION

#### 30-7-3. Individualized education program for blind students; evaluation of Braille skills.

**Cross references.** — Delivery of deaf-blind services and techniques leading to maximum independence, § 34-15-20.

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## CHAPTER 8

### GEORGIA COUNCIL ON DEVELOPMENTAL DISABILITIES

Sec.

30-8-1. Creation; purpose; members; duties; funding; expenses.

#### 30-8-1. Creation; purpose; members; duties; funding; expenses.

(a) There is created the Georgia Council on Developmental Disabilities. The council shall serve as the designated state agency and state planning council for purposes of carrying out the provisions of Chapter 75 of Title 42 of the United States Code, as now or hereafter amended, relating to programs for persons with developmental disabilities.

(b) The members of the council shall be appointed by the Governor from among the residents of the state, and the composition of the council shall comply with the membership requirements of Chapter 75 of Title 42 of the United States Code, as now or hereafter amended. The Governor shall consider appointing to the council persons representing a broad range of individuals with developmental disabilities and individuals interested in programs for the developmentally disabled. To the extent feasible, appointments to the council shall be made with a view toward equitable geographic, racial, and ethnic representation.

(c) Each member shall serve for a term of four years or until a successor is appointed. Members shall be eligible to succeed themselves. Vacancies shall be filled in the same manner as original

appointments. The council shall elect its own chairperson and such other officers as it deems necessary. The council may adopt rules and procedures and shall meet at the call of the chairperson.

(d) The Georgia Council on Developmental Disabilities shall:

(1) Develop and implement a state plan, which includes the specification of federal and state priority areas, to address on a state-wide and comprehensive basis the need for services, support, and other assistance for individuals with developmental disabilities and their families;

(2) Monitor, review, and evaluate, not less than annually, the implementation and effectiveness of the plan;

(3) Submit to the United States secretary of health and human services, through the Governor, such plan and periodic reports on the council's activities as the secretary finds necessary;

(4) Receive, account for, and disburse funds paid to the state pursuant to the provisions of Chapter 75 of Title 42 of the United States Code, as now or hereafter amended, and as authorized by the approved state plan;

(5) To the maximum extent feasible, review and comment on all plans in the state which relate to programs affecting persons with developmental disabilities;

(6) Serve as an advocate for persons with developmental disabilities;

(7) Advise the Governor, the General Assembly, and all other state agencies in matters relating to developmentally disabled persons; and

(8) Fulfill the responsibilities and meet the requirements of a designated state agency and of a state planning council as provided by Chapter 75 of Title 42 of the United States Code, as now or hereafter amended.

(e) The Georgia Council on Developmental Disabilities shall be attached to the Department of Behavioral Health and Developmental Disabilities for administrative purposes only as provided in Code Section 50-4-3. The council shall recruit and hire staff as provided by law and as the council determines necessary to carry out its duties. All costs incurred by the council shall be covered by funds paid to the state under Chapter 75 of Title 42 of the United States Code, as now or hereafter amended, except that members who are state employees shall be reimbursed for their expenses by their agency in the same manner as other state employees. Members who are not state employees shall be reimbursed for their actual expenses, including travel and any other

expenses incurred in performance of their council duties, from funds appropriated to the Department of Behavioral Health and Developmental Disabilities. (Code 1981, § 30-8-1, enacted by Ga. L. 1995, p. 406, § 1; Ga. L. 2009, p. 453, § 3-8/HB 228.)

**The 2009 amendment**, effective July 1, 2009, substituted “Georgia Council on Developmental Disabilities” for “Governor’s Council on Developmental Disabilities” in subsection (a), in the introductory language of subsection (d), and in subsec-

tion (e); and substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” in the first and last sentences of subsection (e).









